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Dominions

No. 21.

CONFIDENTIAL.

FURTHER CORRESPONDENCE

[1910 and 1911]

RELATING TO THE

TREATMENT OF ASIATICS IN  
THE DOMINIONS.

[*In continuation of Dominions No. 10 ; continued by Dominions No. 44.*]

[NOTE.—*Correspondence relating to the Treatment of Asiatics in South Africa will be found in separate South African Office and Parliamentary Papers.*]

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IMPERIAL CONFERENCE SECRETARIAT,

May, 1912.



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|------------|---|-------------------------|----------------|---|-------|
|            |   |                         | 1910.          |   |       |
| 1          | Foreign Office ...  | —                       | January 3      | Transmits copy of a Note from the United States Ambassador in London enquiring as to the probable attitude of His Majesty's Government with reference to Japanese immigration into Canada, Australia, and other British Colonies on the termination of the present Commercial Treaty with Japan, and suggesting that the two Governments should assume an identical position. | 1     |
| 2          | To Foreign Office ...   | —                       | January 25     | Suggests that the United States Ambassador should be informed that His Majesty's Government see no present reason to change their existing attitude on the subject of Japanese immigration, i.e., that the Dominions must be left to make their own arrangements with Japan.  | 2     |
| 3          | Foreign Office ...  | Confidential.           | February 9     | Encloses copy of a Note which was addressed to the United States Chargé d'Affaires in the sense of No. 2; proposes, if Canada and Japan do not object, to communicate to the United States Government the confidential memorandum regulating Japanese labour emigration to Canada which accompanied the Notes of 23rd December, 1907.   | 2     |
| Canada.    |   |                         |                |   |       |
| 4          | To the Governor-General.  | Telegram, Confidential. | February 10    | States that United States Government are anxious to learn the precise terms of the arrangement with Japan for restricted immigration into Canada, and enquires whether his Government have any objection, provided the Japanese Government agree, to the communication to the United States Government of Count Hayashi's Note of 23rd December, 1907.                        | 3     |
| 5          | To Local Government Board, Emigrants' Information Office, Board of Trade, Foreign Office, India Office. | —                       | February 16    | Transmits copy of the Canadian Immigration Bill, and presumes it is not desired to take any exception to its terms.   | 4     |
| 6          | The Governor-General.   | Telegram                | (Rec. Feb. 17) | States that his Government regret that they are unable to agree to the confidential communication of Count Hayashi's letter to the Government of the United States.   | 4     |

| Serial No. | From or to whom.         | Despatch No., &c. | Date.                      | Subject.  | Page. |
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|            |                          |                   | 1910.                      |   |       |
| 7          | To Foreign Office...     | —                 | February 22                | Transmits a copy of No. 6 and concurs in the view of the Canadian Government.   | 4     |
| 8          | The Governor-General.    | Secret            | February 23 (Rec. Mar. 5.) | Transmits copy of an approved minute of the Privy Council for Canada explaining that Ministers do not feel at liberty to agree to Count Hayashi's note of 23rd December, 1907, being confidentially communicated to the United States Government.   | 5     |
| 8a         | India Office ...         | —                 | March 9                    | Observes, in reply to No. 3, that Lord Morley does not desire to take exception to the terms of the Bill but calls attention to the proposal to take powers to prohibit the immigration of British Indian subjects: presumes that these powers would be exercised against any particular class of British subjects only in a grave emergency. | 5     |
| 9          | To Foreign Office...     | Confidential.     | March 12                   | Transmits copy of No. 8 and concurs in the views of the Canadian Government.  | 6     |
| 10         | Board of Trade ...       | —                 | March 14                   | States that the Board do not desire to take any exception to the provisions of the Immigration Bill.  | 6     |
| 10a        | To the Governor-General. | 200               | March 19                   | Communicates substance of No. 8a: the Government of India have expressed the opinion that further experience should be awaited before raising the question of imposing any further restrictions on the entry of Indians into Canada.  | 6     |
| 11         | To India Office ...      | —                 | March 21                   | States that it is not considered desirable to communicate to the Government of Canada a copy of the letter from the Government of India, dated May 20th, 1909 (as suggested in No. 8a), but encloses copy of No. 10a.   | 7     |
| 11a        | The Governor-General.    | 125               | May 2 (Rec. May 14.)       | Transmits copy of an approved Minute of the Privy Council for Canada explaining that the power given by Section 38 (c) of the Immigration Bill will not be exercised except in cases of emergency and only then with due regard to the interests of the other portions of the Empire.   | 7     |
| 12         | India Office ...         | —                 | June 2                     | Transmits copy of a communication from certain British Indian subjects in Canada asking for an amendment of the immigration laws; enquires what action has been taken in the matter by the Canadian Government and what is the exact status of British Indian immigrants in Canada.   | 8     |
| 13         | To India Office ...      | —                 | June 11                    | Remarks on the enclosure in No. 12 and states that a copy of the correspondence will be sent to the Governor-General for his report thereon.  | 11    |
| 14         | To the Governor-General. | 428               | June 11                    | Transmits copies of Nos. 12 and 13, and asks for a report on the subject.   | 11    |



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| <b>1910.</b> |   |                            |                           |  |       |
| 34           | The Governor ...                                      | New South Wales, Telegram. | (Rec. Dec. 7)             | Asks whether there is any objection to his approving an amended Regulation 366 under the Crown Lands Act, providing for the classification of applicants for holdings as Europeans, coloured British subjects, coloured persons who are aliens, and for the preferential dealing with applications in that order.  | 27    |
| 35           | To the Governor ...                                   | New South Wales, Telegram. | December 9                | Trusts that the State Government will not press for clause in proposed form; explains the objections of His Majesty's Government and suggests that the grant of preference to European settlers should be carried out by means of a language test; requests that he will urge these views on his Ministers.  | 28    |
| <b>1911.</b> |   |                            |                           |  |       |
| 36           | To Sir John Fuller, Bart., M.P. (Governor designate). | Victoria                   | February 9                | Conveys instructions as to the reservation of Bills and particularly those imposing disabilities <i>nominatim</i> on Asiatics, and requests that he will report by telegraph the introduction of any such Bill.  | 28    |
| 37           | The Governor ...                                      | New South Wales, 2.        | January 3 (Rec. Feb. 13.) | Encloses, with reference to No. 35, copy of a minute by the Minister of Lands proposing the classification of applicants for land ballots; expresses opinion that it is not practicable to adopt a language test, but he has no alternative to suggest.  | 29    |
| 38           | To the Governor ...                                   | New South Wales, 27.       | March 10                  | Acknowledges the receipt of No. 37; points out that Mr. Nielsen's minute does not dispose of the objections to a regulation expressly differentiating against Asiatics, and suggests that the regulations should be so amended as to enable the Land Boards to refuse applications from persons of bad character which would make it possible to exclude undesirable Asiatics. | 32    |
| 39           | The Governor ...                                      | New South Wales, Telegram. | (Rec. Mar. 21.)           | Asks for reply to No. 37 ...   | 32    |
| 40           | To the Governor ...                                   | New South Wales, Telegram. | March 28                  | Acknowledges the receipt of No. 39; refers to No. 38, and states that Mr. Harcourt hopes to discuss the matter with the Premier in England.  | 33    |
| 41           | Sir Chas. Lucas to Mr. MacGowen.                      | New South Wales.           | May 22                    | Encloses copy of proposed land regulation as Mr. Harcourt would like to see it amended.  | 33    |
| 42           | The Governor ...                                      | Queensland, Telegram.      | (Rec. Dec. 6)             | Reports introduction of a Bill into Parliament providing that leases of land to aliens must not be granted in excess of five acres unless alien has passed a language test; asks if he should assent.  | 34    |

|              |                       |             |             |   |    |
|--------------|-----------------------|-------------|-------------|---|----|
| <b>1911.</b> |                       |             |             |   |    |
| 43           | To Foreign Office ... | Queensland. | December 9  | Transmits copy of No. 42 and asks whether there is any objection on treaty grounds to the passing of the Bill in the proposed form; proposes to authorize the Governor to assent. | 34 |
| 44           | Foreign Office ...    | Queensland. | December 29 | Expresses opinion that the passing of the Bill in its present form is open to objection on treaty grounds.  | 35 |

## APPENDIX.

Extracts from the Immigration Act of Canada, 9 & 10 Edward VII., cap. 27 ... Page. 37



## FURTHER CORRESPONDENCE

RELATING TO THE

### TREATMENT OF ASIATICS IN THE DOMINIONS.

426

No. 1.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 4 January, 1910.)

[Answered by No. 2.]

SIR,

Foreign Office, January 3, 1910.

I AM directed by Secretary Sir Edward Grey to transmit to you, to be laid before the Earl of Crewe, the accompanying copy of a note which has been received from the United States Ambassador in London, enquiring as to the probable attitude of His Majesty's Government with reference to Japanese immigration into Canada, Australia, and other British Colonies, on the termination of the present Commercial Treaty with Japan.

Mr. Whitelaw Reid communicated the note personally to Sir E. Grey, and, in doing so, stated that the matter would have to go before the United States Senate. His Excellency seemed to anticipate that its passage through that body would be facilitated if an arrangement were arrived at whereby a similar attitude would be adopted by the two countries in respect of the immigration question. Sir E. Grey explained to His Excellency that an arrangement had been made directly by Canada with Japan on the subject, and that this, so far as he knew, was considered to be working satisfactorily.

Mr. Whitelaw Reid asked that he might have an answer as soon as possible, as the matter would come before the Senate almost immediately, and Sir E. Grey would, therefore, be glad to be furnished with Lord Crewe's views on the subject at his early convenience.

I am, &c.,

F. A. CAMPBELL.

Enclosure in No. 1.

SIR,

American Embassy, London, December 30th, 1909.

UNDER instructions from my Government I venture to ask if you would feel at liberty to inform me of the probable attitude of His Majesty's Government with reference to Japanese immigration in Canada, Australia and other British Colonies, in your new treaty with Japan.

Our treaty is terminable one year later than yours. If it should prove that your attitude on the subject is to be similar to ours—and the known sentiments of the two Colonies named seem to make this probable—there might be a distinct advantage in conducting the negotiations simultaneously, and also in co-operation, or at least in assuming an identical position.

If this should seem practicable the United States Senate might be willing to accede to the Japanese request for such action as should make our treaty terminable on the same date with yours and others.



It is proper to say that we shall insist on having in our new treaty a clause similar to that in the fourth paragraph, Article 2 of our present treaty.\* As the interest of Canada, Australia, and other British Colonies in this regard is believed to be the same with that of our Pacific Coast States, it is hoped that an early understanding in the above sense may be reached.

The Right Honourable  
Sir Edward Grey, Bart.,  
&c., &c., &c.

I have, &c.,  
WHITELAW REID.

426

No. 2.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 3.]

SIR, Downing Street, 25 January, 1910.  
I AM directed by the Earl of Crewe to acknowledge the receipt of your letter of the 3rd instant,† enclosing a copy of a note from the United States Ambassador on the subject of the probable attitude of His Majesty's Government with regard to Japanese immigration into the British Dominions.

2. It appears to Lord Crewe that, so far as is consistent with friendly relations to the United States, it is very desirable that His Majesty's Government should preserve an entirely free hand in this matter, and should not appear either to the Japanese Government or to the Governments of the Dominions concerned to be negotiating in common with the American Government. If there would be any chance of the Japanese Government concluding a treaty which allowed commercial intercourse and was silent on the subject of immigration leaving immigration to be dealt with by the legislation of the different communities, it would be of much advantage, otherwise it is presumed that a treaty on much the same lines as the present would be concluded, leaving the Dominions, under the Colonial Clause, to take their own course.

3. Accordingly, from the point of view of Colonial policy, and subject to such other considerations as may be present to Sir E. Grey, Lord Crewe would suggest that the United States Ambassador should be informed that His Majesty's Government see no present reason to change their existing attitude on the subject of Japanese immigration, viz., that the self-governing Dominions must be left as far as possible to make their own arrangements with Japan.

I am, &c.,  
C. P. LUCAS.

4069

No. 3

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 10 February, 1910.)

[Answered by No. 7.]

(Confidential.)

SIR, Foreign Office, February 9th, 1910.  
WITH reference to your letter, 426, of the 25th January,‡ I am directed by Secretary Sir E. Grey to enclose, for the information of the Secretary of State for the Colonies, a copy of the Note which was addressed to the United States Chargé d'Affaires in reply to the enquiry as to the probable attitude of His Majesty's Government with reference to Japanese immigration into Canada and other British Dominions on the termination of the present commercial treaty with Japan.

The United States Ambassador has since returned from leave of absence and has asked Sir E. Grey whether he could be furnished with a copy of the arrangement concluded on January 20th, 1908, between Canada and the Japanese Government.

\* "It is, however, understood that the stipulations contained in this and the preceding Article do not in any way affect the laws, ordinances, and regulations with regard to trade, the immigration of labourers, police, and public security, which are in force or may hereafter be enacted in either of the two countries."

† No. 1.

‡ No. 2.

The notes exchanged between Mr. Lemieux and Count Hayashi on the 23rd of December, 1907, have, of course, been published, and could be communicated to Mr. Whitelaw Reid, but to do so would imply that these notes were complete in themselves without the confidential memorandum addressed to His Majesty's Ambassador at Tokio, embodying the regulations by which Japanese labour emigration to Canada would be restricted.

I am accordingly to request that, if the Earl of Crewe sees no objection, the Dominion Government may be asked by telegraph whether they have any objection to the communication, confidentially if desired, to the United States Ambassador of the memorandum in question.

I am to add that in the event of a favourable answer from the Dominion Government a similar enquiry will be addressed to the Japanese Government.

I am, &c.,  
W. LANGLEY.

Enclosure in No. 3.

SIR EDWARD GREY to MR. W. PHILLIPS.

SIR, Foreign Office, January 31, 1910.

I HAVE carefully considered Mr. Whitelaw Reid's note of the 30th ultimo, enquiring as to the probable attitude of His Majesty's Government with reference to Japanese immigration into Canada, Australia, and other British Dominions on the termination of the present commercial treaty with Japan, and I have the honour to offer the following observations:—

As you are no doubt aware, there is to all intents and purposes no Japanese immigration into the United Kingdom. The question is one which in practice concerns almost exclusively the self-governing Dominions of the British Empire, and you will readily understand that His Majesty's Government would be unable to enter into any negotiations on the subject except in full communication with the Governments of the Dominions, each of which requires separate consideration of its peculiar circumstances. As regards Canada in particular, an agreement was concluded on the 20th January, 1908, between the Canadian and Japanese Governments regulating the question of Japanese emigration in a manner agreeable to both countries. This arrangement is still in force and is understood to be working satisfactorily.

In the circumstances His Majesty's Government do not feel that present conditions would justify them in proposing to initiate general negotiations with the Japanese Government on the question. They see no present reason to change their existing attitude as to Japanese immigration, that is to say, that, subject of course to the ultimate responsibility of His Majesty's Government, each self-governing Dominion must be left as far as possible to make its own arrangements with Japan.

I should be glad if you would be so good as to bring the above considerations to the knowledge of your Government, while expressing to Mr. Secretary Knox their appreciation of the courtesy shown by him in consulting them in the matter.

I have, &c.,  
E. GREY.

CANADA.

4069

No. 4.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Sent 6.50 p.m., 10th February, 1910.)

TELEGRAM.

[Copy to Foreign Office, 11 February, 1910. L.F.]

[Answered by No. 6.]

(Paraphrase.)

Confidential. United States Government are anxious to learn precise terms of arrangement with Japan for restricted immigration into Canada. Have your Government any objection, assuming consent of Japanese Government is first



obtained, to confidential communication to United States Government of Hayashi's note to Ambassador of 23rd December, 1907,\* giving substance of instructions to local Governors!—CREWE.

4063

No. 5.

CANADA.

COLONIAL OFFICE to FOREIGN OFFICE.†

[Answered by Nos. 8A and 10.]

SIR, Downing Street, 16 February, 1910.  
With reference to your letter of the 13th May last,‡ I am directed by the Earl of Crewe to transmit to you, to be laid before Secretary Sir Edward Grey, copy of a Bill§ entitled "An Act respecting Immigration," which has been introduced into the House of Commons of Canada.

2. This Bill does not differ materially from the Bill on the same subject which was introduced last year into the Canadian Parliament but failed to become law, and Lord Crewe presumes that Sir Edward Grey will not desire to take any exception to its terms.

I am, &c.,  
C. P. LUCAS.

4862

No. 6.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 7.15 a.m., 17th February, 1910.)

TELEGRAM.

(Paraphrase.)

With reference to your telegram of the 10th of February|| as to the agreement with Japan for the restriction of immigration, my Government regret that they are not able to agree to the confidential communication of Count Hayashi's letter to the Government of the United States.

A despatch follows by mail.—GREY.

4862

No. 7.

CANADA.

COLONIAL OFFICE to FOREIGN OFFICE.

SIR, Downing Street, 22 February, 1910.  
In continuation of the letter from this Office of the 11th February,¶ I am directed to transmit to you, to be laid before Secretary Sir E. Grey, copy of a telegram\*\* from the Governor-General of Canada, stating that his Ministers are unable to agree to the communication to the United States Government of Count Hayashi's note of the 23rd of December, 1907.

2. Lord Crewe concurs in the view of the Canadian Government that this note should not be communicated to the United States Government.

I am, &c.,  
C. P. LUCAS.

\* See page 117 of Dominions No. 3.  
† Identical letters, *mutatis mutandis*, were sent to the Board of Trade and India Office, and, with the exception of paragraph 2, to the Local Government Board and the Emigrants' Information Office.

‡ No. 25 in Dominions No. 10.

§ L.F. transmitting copy of No. 4.

¶ Not reprinted.

\*\* No. 6.

| No. 4.

6698

No. 8.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 5 March, 1910.)

(Secret.)

My LORD, Government House, Ottawa, 23rd February, 1910.  
With reference to my cypher telegram of the 16th February,\* regarding the confidential communication to the United States Government of Count Hayashi's note of the 23rd December, 1907,† to the Honourable Rodolphe Lemieux, embodying the arrangement for the restriction of Japanese immigration into Canada, I have the honour to transmit, herewith, for your Lordship's information, copy of an approved Minute of His Majesty's Privy Council for Canada, upon which my telegram was based.

Your Lordship will observe that my responsible advisers consider that, as the treatment of this arrangement as mutually confidential was one of the conditions at the time it was entered upon, and as it has been so regarded ever since by both parties, it is in the public interest that its confidential character should be maintained, and they do not feel at liberty to agree to its communication to the United States Government.

I have, &c.,  
GREY.

Enclosure in No. 8.

CERTIFIED COPY of a Report of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 19th February, 1910.

(P.C. 296.)

The Committee have had under consideration a report, dated 14th February, 1910, from the Secretary of State for External Affairs, to whom was referred a cable despatch, dated 10th February, 1910, from the Right Honourable the Secretary of State for the Colonies, enquiring whether there would be any objection on the part of Your Excellency's Advisers to confidential communication being given to the United States Government of Count Hayashi's note of the 23rd December, 1907, to the Honourable Mr. Lemieux, embodying the arrangement for the restriction of Japanese immigration into Canada, provided the consent of the Japanese Government is first obtained.

The Minister states that a condition of this arrangement at the time it was entered into was that it should be treated as mutually confidential; that it has ever since been so regarded by both parties to the Agreement, and Your Excellency's Ministers are of opinion that it is in the public interest that its confidential character should be maintained.

The Committee, therefore, advise that Your Excellency may be pleased to inform the Right Honourable the Secretary of State for the Colonies by telegraph that the Canadian Government do not feel at liberty to agree to the confidential communication of Count Hayashi's letter to the United States Government.

All which is respectfully submitted for Your Excellency's approval.

RODOLPHE BOUDREAU,  
Clerk of the Privy Council.

7178

No. 8A.

CANADA.

INDIA OFFICE to COLONIAL OFFICE.

(Received 10 March, 1910.)

[Answered by No. 11.]

SIR, India Office, Whitehall, London, S.W., 9th March, 1910.  
I AM directed by Viscount Morley to acknowledge the receipt of Sir Charles Lucas's letter of the 16th ultimo,‡ No. 4063, regarding the Immigration Bill which has been introduced into the Canadian House of Commons.

\* No. 6.

† See page 117 of Dominions No. 3.

‡ See No. 5.



Lord Morley does not desire to take exception to the terms of this Bill, but he observes that under Section 38 (c) it is again proposed to take powers which would enable the Dominion to prohibit the immigration of British Indian subjects. The power of discriminating expressly against a particular race was contained in the Bill of 1909, and I am to request that the attention of the Earl of Crewe may be invited to the remarks made in my letter of the 28th April last.\*

I am further to suggest that, if Lord Crewe sees no objection, the opinions expressed by the Government of India in their letter of the 20th May last (a copy of which was transmitted in my letter of the 30th June†) may be communicated to the Governor-General of the Dominion. The Government of India considered that further experience should be awaited before raising the question of imposing any further restrictions on the entry of Indians into Canada. Lord Morley presumes that there is no immediate intention of discriminating against British Indian subjects under Section 38 (c) of the new Bill, and that the powers to be taken thereby would be exercised against any particular class of British subjects only in a grave emergency.

I have, &c.,  
COLIN G. CAMPBELL.

6698

No. 9.  
CANADA.

COLONIAL OFFICE to FOREIGN OFFICE.

(Confidential.)

Sir, Downing Street, 12 March, 1910.  
In continuation of the letter from this Office of the 22nd February,‡ I am directed by the Earl of Crewe to transmit to you, to be laid before Secretary Sir E. Grey, copy of a despatch§ from the Governor-General of Canada stating the grounds on which his Ministers have decided that they cannot agree to the communication to the United States Government of Count Hayashi's Note of the 23rd December, 1907, regarding the restriction of Japanese immigration into Canada.

2. Lord Crewe concurs in the views of the Canadian Government with regard to this point.

I am, &c.,  
C. P. LUCAS.

7710

No. 10.  
CANADA.

BOARD OF TRADE to COLONIAL OFFICE.

(Received 15 March, 1910.)

Marine Department, 7, Whitehall Gardens, London. S.W.,

Sir, 14 March, 1910.

In reply to your letter of the 16th ultimo (No. 4063/1910),|| respecting the Canadian Bill, No. 102, on the subject of immigration, I am directed by the Board of Trade to state, for the information of the Earl of Crewe, that they do not desire to take any exception to the provisions of this Bill.

I have, &c.,  
WALTER J. HOWELL.

7178

No. 10A.  
CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

[Answered by No. 11A.]

(No. 200.)

My Lord, Downing Street, 19 March, 1910.  
The Secretary of State for India has had under his consideration a copy of the Immigration Bill (No. 102) which was read a first time in the Canadian House of Commons on the 19th January last.

\* No. 20 in Dominions No. 10.  
§ No. 8.

† No. 27 in Dominions No. 10.  
‡ See No. 5 and footnote.

‡ No. 7.

2. He does not desire to take exception to the terms of the Bill, but he observes that under Section 38 (c) it is again proposed to take powers which would enable the Dominion to prohibit the immigration of British Indian subjects. He presumes, however, that there is no immediate intention of discriminating against them under that section, and that the powers to be taken by it would be exercised against any particular class of British subjects only in a grave emergency, and with that consideration for broader Imperial interests which has marked the policy of the Dominion with regard to British Indian immigrants.

3. I may add that the Government of India have expressed an opinion that further experience should be awaited before raising the question of imposing any further restrictions on the entry of Indians into Canada.

4. I shall be glad if you will lay this despatch before your Ministers.

I have, &c.,  
CREWE.

7178

No. 11.

CANADA.

COLONIAL OFFICE to INDIA OFFICE.

Sir, Downing Street, 21 March, 1910.

I AM directed by the Earl of Crewe to acknowledge the receipt of your letter of the 9th instant\* respecting the Immigration Bill which has been introduced into the Canadian House of Commons.

2. It was not thought necessary at the time to communicate to the Canadian Ministers the Government of India's letter of the 20th May last,† since its substance was to some extent contained in that Government's previous letter of the 11th March,‡ a copy of which was duly forwarded to the Governor-General of Canada. In these circumstances Lord Crewe does not think it desirable at the present date to send to Lord Grey a copy of the letter of the 20th May,† but he has addressed to the Governor-General the despatch§ of which a copy is enclosed for Viscount Morley's information.

3. The Secretary of State for India is, no doubt, right in presuming that there is no immediate intention of using against British subjects the powers proposed to be conferred by Section 38 (c) of the new Bill; but it will be seen that Lord Crewe has raised the point in his despatch.

I am, &c.,  
FRANCIS J. S. HOPWOOD.

14541

No. 11A.  
CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 14 May, 1910.)

[Copy to India Office, 27 May, 1910. L.F.]

(No. 195.)

My Lord, Government House, Ottawa, Canada, 2nd May, 1910.

With reference to your Lordship's despatch, No. 200, dated the 19th March, 1910,§ regarding the provisions of Section 38 (c) of the Immigration Bill (No. 102) recently passed by the Dominion Parliament, I have the honour to transmit, herewith, for your Lordship's information, copy of an approved minute of His Majesty's Privy Council for Canada.

Your Lordship will observe that it is not intended that the power given the Governor-General in Council under this section to prohibit the immigration of British Indian subjects into Canada shall be exercised except in cases of emergency, as such arise, and only then with due regard, as in the past, to the interests of the other portions of the Empire. There is no immediate intention of discriminating against British Indian subjects under this clause, but it is believed that the fact

\* No. 8A.

† Enclosure in No. 27 in Dominions No. 10.

‡ Enclosure in No. 18 in Dominions No. 10.

§ No. 10A.



of the Governor in Council holding this power, over and above the specific provisions of the Immigration Act, will be effective in deterring possible movements towards Canada of people whom, for economic or other reasons existing at the moment, it might not be desirable to have added to our population.

I have, &c.,  
GREY.

Enclosure in No. 11a.

CERTIFIED COPY OF A REPORT OF THE COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY HIS EXCELLENCY THE GOVERNOR-GENERAL ON THE 26TH APRIL, 1910.

(P.C. 713.)

The Committee of the Privy Council have had under consideration a report, dated 12th April, 1910, from the Secretary of State for External Affairs, to whom was referred a despatch, dated 19th March, 1910, from the Right Honourable the Principal Secretary of State for the Colonies, calling attention to the provisions of Sub-section (c) of Section 38 of the Immigration Act recently passed by the Dominion Parliament, which gives authority to prohibit the immigration of British Indian subjects into Canada.

The Secretary of State for External Affairs states that the Minister of the Interior represents that the power given the Governor in Council by this sub-section is not intended to be exercised except in cases of emergency, as such arise, and then always with due regard, as in the past, to the interests of the other portions of the Empire. The Secretary of State for India may be sure that there is no immediate intention of discriminating against British Indian subjects under the above-mentioned Sub-section (c) of Section 38 of the Immigration Act, but it is believed that the fact of the Governor in Council holding this power, over and above the specific provisions of the Act, will have a salutary effect in deterring possible movements towards Canada of people whom, for economic and other reasons existing at the moment, it might not be desirable to have added to our population.

The Committee, on the recommendation of the Secretary of State for External Affairs, advise that Your Excellency may be pleased to advise the Right Honourable the Principal Secretary of State for the Colonies in the sense of this minute.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,  
Clerk of the Privy Council.

16667

No. 12.

CANADA.

INDIA OFFICE to COLONIAL OFFICE.

(Received 2 June, 1910.)

[Answered by No. 13.]

SIR, India Office, Whitehall, London, S.W., 2nd June, 1910.

With reference to the correspondence ending with your letter of the 21st March last,\* No. 7178, I am directed by Viscount Morley to transmit, for the consideration of the Earl of Crewe, the enclosed copy of a communication from certain British Indian subjects residing within the Dominion of Canada.

With reference to the statement that British Indian subjects are forced to produce a sum of \$200 before landing, whereas the other British subjects are not, I am to enquire whether the new Immigration Bill has passed into law, and, if so, whether any proclamations or orders have been issued under Section 38 (c) discriminating against British Indian subjects. If the reference is to the old law, Lord Morley understands that the statement is not accurate, since the Order in Council of 3rd June, 1908, applied to all Asiatics other than those specially excepted as possessing treaty rights.

I am to say that His Lordship will be glad to be informed of the action, if any, taken by the Government of the Dominion on this petition.

I am also to enquire what is the exact status as regards Canadian citizenship of British Indian immigrants who have entered the Dominion in conformity with the immigration rules.

I have, &c.,  
COLIN G. CAMPBELL.

Enclosure in No. 12.

We, the British Indian subjects residing in the Dominion of Canada, assembled in a public meeting held at 1632, 2nd Avenue West, Fairview, Swadesh Sevak Home, on April 24th, 1910, most respectfully approach you to redress the following grievances under which we labour.

We are earning our livelihood as merchants and labourers, holding extensive real property.

The Dominion Immigration Laws and their interpretations practically debar our relatives and countrymen from landing in the Dominion of Canada.

Notwithstanding that we are prepared to submit to the conditions and requirements of the present laws—namely, to show the amount which is necessary for all other British subjects—that we are not paupers and have independent means of subsistence, we, to our regret, find that we are not permitted to land in this country. This is a great hardship to us, and particularly as we have to incur the passage expenses. The wording of the present laws is vague, and the interpretations of these laws by the Court prevents our countrymen from entering Canada.

We therefore request that the Dominion Government be pleased to amend the existing laws so that the difficulties in the way of those countrymen of ours coming from India or any other parts of the world be removed.

We therefore submit these points for your consideration:—

1. The present Dominion Immigration Laws are quite inconsistent to the Imperial policy, because they discriminate against the people of India, who are British subjects; as they are forced to produce a sum of \$200.00 before landing, whereas the other British subjects are not.

2. The present Dominion Immigration Laws are humiliating to the people of India, when the aliens, such as the Japanese, by the treaty rights can come to Canada showing a very small amount of \$30 to \$50, whereas, we, the fellow-British subjects, are not allowed to enjoy the birthright of travelling from one part of the British Empire to the other.

3. The present Dominion Immigration Laws insist upon the Indian people to buy tickets direct from India because the laws read such as "The immigrants must come direct from the land of birth or land of citizenship." As long as we are British subjects any British territory is the land of our citizenship from the interpretation of the Imperial and parental Government. It is needless to point out that the narrow interpretations of the Dominion Government about the land of citizenship do not allow us to enter Canada from London, Hong Kong, Shanghai, and other parts of the British Empire. We cite two of the many instances:—

(1) One Bhai Hari Singh, formerly resident of Golden, B.C., went to London with Professor Teja Singh some time ago, but when the said Hari Singh wanted to return to Canada, he was refused to enter this country.

(2) One Mr. Nathu Ram, a student from India, was not allowed to land at Vancouver, where his friends and relatives were residing, only because he had to change his ticket from Hong Kong for his personal comforts.

4. Accepting the present law as it is, it is a natural impossibility for the British Indian Immigrants to come to Vancouver, B.C., as there is no direct line of transportation by steamships.

5. The restriction of the foreign immigrants is applied to the labourers only (as it is very well seen in the case of the Chinese exclusion in the United States, where the Chinese students and merchants are allowed to come freely there). But our students and merchants coming from Japan, China, Europe, and other parts of the world have to undergo the same difficulty as the ordinary labourers.

One Mr. Jogesh Chander Misra, of Bengal, Scholar of the Association for the Advancement of Science and Industries of India, was refused to land at Vancouver, whereas he freely entered the port of Seattle.

6. Under the present Dominion Immigration Laws, even if a British Indian subject holding real property in this country and intending to establish a home



permanently wants to bring his family and children here, he is forced to show cash of \$200 per head, which really is a hardship and severe injustice.

7. One of the sacred privileges of the British citizenship is the individual liberty. The treatment received by us under the existing Dominion Immigration Laws hampers our individual liberty.

8. All the British subjects after residence of six months are eligible to citizenship of the Dominion of Canada, but to our misfortune we are debarred from enjoying this right. We strongly protest against it, and demand our rights as British subjects with all the emphasis we can command.

We appeal and most forcefully bring to your notice that no such discriminating laws are existing against us in foreign countries like the United States of America, Germany, Japan, and Africa, to whom we do not owe any allegiance whatsoever. Under these circumstances we most respectfully implore a favourable consideration and prompt amendment of the unfair laws which impress us that we enjoy better privileges under foreign flags than those under the British flag.

Be it resolved that we empower Messrs. Teja Singh, M.A., LL.B., and H. A. Talchekar, B.A., Secretary of Bombay Workingman's Association, to present our cause to the proper authorities in England and to take such steps to ventilate this question so as to enlist the sympathy of the British public. We expect to send more representatives in future.

Proposed by Mr. G. D. Kumar.

Seconded by Mr. Indar Singh.

Supported by Mr. Harnam Singh.

Carried by all.

#### RESOLUTION 2.

Copies of the resolutions are to be forwarded to the Honourable Sardar Sunder Singh Majithia, Hon. G. K. Gokhale, Hon. Lala Harkisham Lal, B.A., Hon. Mian Shadin, B.A., and be requested to seek the co-operation of the Indian Government regarding the removal of the barriers placed in the way of British Indian subjects.

Proposed by Pandit Shiv Dayal.

Seconded by Mr. Umbao Singh.

Supported by Mr. Sher Singh.

Carried by all.

#### RESOLUTION 3.

Copies of the resolutions are to be forwarded to the authorities of the Dominion Government, the Secretary of State for India, and (3) the Viceroy of India.

Proposed by Mr. Bahumkand.

Seconded by Mr. Natha Singh.

Supported by Mr. Gurmukh Singh.

Carried by all.

#### RESOLUTION 4.

Copies of the resolutions are to be forwarded to Indian Press in general to ventilate our grievances to Indian public through their mediums

Proposed by Mr. Bhagam.

Seconded by Mr. Nabhiram.

Supported by Mr. Ker Singh.

Carried by all.

#### RESOLUTION 5.

Bhai Bhag Singh, the Secretary of Khalsa Dewan of Vancouver, B.C., be empowered to reach the chief Khalsa Dewan of India to intimate the unfortunate situation by which we are debarred from coming to Canada.

Proposed by T. Das.

Seconded by Hazura Singh.

Supported by Harman Singh

Approved by all.

H. RAHIM,

President.

G. D. KUMAR,

Secretary.

RAM CHAND BARALMAN.

16667

No. 13.

CANADA.

COLONIAL OFFICE to INDIA OFFICE.

SIR,

Downing Street, 11 June, 1910.

I AM directed by the Earl of Crewe to acknowledge the receipt of your letter of the 2nd June,\* enclosing a copy of a communication from certain British Indian subjects residing within the Dominion of Canada.

2. In reply, I am to request that you will inform Viscount Morley of Blackburn that the new Immigration Bill of the Canadian Parliament has passed into law, but that so far as is known, no proclamations or orders have been issued under Section 33 (c) discriminating against British Indian subjects, and Lord Crewe has no doubt that the reference made in the communication is to the Order in Council in force under the former Act, which applies to all Asiatics other than those specially excepted as possessing treaty rights.

3. Lord Crewe apprehends that the reference in the communication to "other British subjects" is a reference to British subjects not of Asiatic nationality, for Chinese British subjects fall under the special Acts of Canada affecting Chinese immigration.

4. Lord Crewe understands that the reference in the eighth paragraph of the communication is to the fact that the franchise of the Dominion of Canada is governed by the laws of the province in which the man is resident, and the law of British Columbia does not grant the franchise to Asiatics. In other provinces, however, there is no such restriction.

5. Lord Crewe is not aware whether the communication has been laid before the Dominion Government, though I may observe that the terms of the resolutions appended to the communication are hardly suitable terms to be used in a petition addressed to a Government, but he will forward a copy of this correspondence to the Governor-General, with a request for a report.

I am, &c.,

C. P. LUCAS.

16667

No. 14.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

[Answered by No. 15.]

(No. 428.)

MY LORD,

Downing Street, 11 June, 1910.

WITH reference to my despatch, No. 200, of 19th March last,† I have the honour to transmit to Your Excellency, to be laid before your Ministers, the accompanying copy of correspondence with the India Office on the subject of certain representations made by British Indian subjects as to the Immigration Laws of Canada.

2. I shall be glad if your Ministers will be so good as to furnish me with a report on the subject.

I have, &c.,

CREWE.

25582

No. 15.

CANADA.

THE ACTING GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 19 August, 1910.)

[Copy to India Office, 30 August.]

(No. 352.)

MY LORD,

Ottawa, Canada, 10th August, 1910.

WITH reference to your Lordship's despatch, No. 428, of the 11th June,§ covering copy of correspondence with the India Office regarding certain representations made by British Indian subjects as to the Immigration Laws of Canada, I

\* No. 12.

† No. 10A.

‡ Nos. 12 and 13.

§ No. 14.



have the honour to forward herewith, for transmission to the Secretary of State for India, copy of an approved minute of His Majesty's Privy Council for Canada in which is embodied a report on the subject.

I have, &c.,  
D. GIROUARD,  
Deputy Governor-General.

Enclosure in No. 15.

CERTIFIED COPY OF A REPORT OF THE COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY HIS EXCELLENCY THE DEPUTY GOVERNOR-GENERAL ON THE 1ST AUGUST, 1910.

(P.C. 1489.)

The Committee of the Privy Council have had before them a report, dated 5th July, 1910, from the Secretary of State for External Affairs, to whom was referred a despatch, dated 11th June, 1910, from the Right Honourable the Principal Secretary of State for the Colonies, on the subject of certain representations made by British East Indian subjects as to the Immigration Laws of Canada.

The Minister states that Canada is looking primarily for immigrants of an agricultural class to occupy vacant lands, and as immigrants from Asia belong, as a rule, to the labouring classes, whose language and mode of life render them unsuited for settlement in Canada, it was found necessary about two years ago to raise the money qualification for Asiatics desiring to enter Canada to \$200, and this has been maintained ever since. There has been no recent change in the matter, the Order in Council now in force being a repetition and continuation of Orders in force before its date.

That this order applies to all persons of Asiatic origin, except the Chinese, with respect to whom there are special statutory regulations, and the Japanese, with respect to whom we have a special agreement.

That the Immigration Act also requires that immigrants of any and every nationality must come to Canada by a continuous journey from the country of which they are natives or citizens, and upon through tickets purchased in that country or purchased or pre-paid in Canada. This provision is not new, but has been in force for over two years. This was found to be a necessary measure of protection for this country, and it applies not only to Hindus, or other Asiatics, but to all persons coming in under the Immigration Act.

The Minister submits—with respect to the individual cases cited in the correspondence now in question—(1) that there are no papers of record in the Department of the Interior referring to Bhai Hari Singh. (2) Nathu Ram. In this case there was an appeal to the Courts, first by application for a writ of *habeas corpus*, and, this failing, the case was carried to the Court of Appeal for the Province of British Columbia, and was there again dismissed. There can be no doubt, therefore, of the regularity of the proceedings in that case, the case having been judged finally, not by the Immigration Agent, but by the highest Court available.

That the law as it stands does not absolutely debar British Indian immigrants, as seems to be alleged in the correspondence. It is quite practicable for a resident of British India to purchase a ticket for Canada in that country, and to travel by a continuous journey on that ticket to Canada, and if he does so, and complies with the law in regard to money qualification, and passes the usual medical examination at port of landing in Canada, there will be no difficulty about his coming into this country.

The Committee, on the recommendation of the Secretary of State for External Affairs, advise that Your Excellency may be pleased to forward a copy hereof to the Right Honourable the Principal Secretary of State for the Colonies for the information of the India Office.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,  
Clerk of the Privy Council.

3202

No. 16.

CANADA.

INDIA OFFICE to COLONIAL OFFICE.

(Received 31 January, 1911.)

[Answered by L.F. transmitting copy of No. 17.]

SIR,

India Office, Whitehall, S.W., 31st January, 1911.

WITH reference to the correspondence on Indian immigration into Canada, ending with Sir Charles Lucas's confidential letter of the 11th January,\* I am directed by the Earl of Crewe to transmit, for the consideration of Mr. Secretary Harcourt, a copy of a memorial which purports to have been signed by some three hundred British Indian subjects resident in the United States, covered by a letter from the Acting Consul-General at San Francisco.

Lord Crewe would be glad to be favoured with Mr. Harcourt's observations on the allegations made in the memorial.

I have, &c.,  
R. RITCHIE.

Enclosure in No. 16.

(Sent under Flying Seal to the Foreign Office, British Consulate-General, San Francisco.)

(Official.)

MY LORD,

8th December, 1910.

I HAVE the honour to transmit herewith a copy of a letter from the Secretary of a Society in this city entitled the "Friends of Hindustan," requesting me to forward the enclosed petition, addressed to your Lordship, by British Indian subjects residing in the United States, regarding the exclusion of Hindus from Canada, and asking that their complaints may be enquired into with a view to the removal of their grievance.

The society mentioned is unknown to me, and there is no record of it in the San Francisco directory, but several Hindus have called at this office and complained of the difficulties they experience of getting admission into Canada to attend to the administration of estates or for the disposition of property, &c.

In such cases the applicants have been furnished with a letter to the Canadian Customs Officers, explaining the object of their visit and stating that they intend to leave Canada as soon as their business is attended to.

The transportation companies will not issue tickets to Canada to Hindus unless they are furnished with some evidence of this description, but I have not heard whether they obtained admission by this means or not.

A duplicate copy of the petition enclosed has been transmitted to the Viceroy of India.

I have, &c.,  
WELLESLEY MOORE,  
Acting Consul-General.

The Right Honourable the Earl of Crewe,  
Secretary of State for India,  
India Office, London.

DEAR SIR,

San Francisco, December 3, 1910.

I AM enclosing herewith duplicate petitions to the Viceroy of India and to the Earl of Crewe, Secretary of State for India, signed by many East Indians who are



residents of the United States. I would be obliged if you would kindly forward their petitions through your office.

Thanking you in advance for this courtesy,

British Consul-General,  
268, Market Street,  
San Francisco.

I remain, &c.,  
C. B. WALTERS,  
Secretary, Friends of Hindustan.

The Earl of CREWE,  
Secretary of State for India,  
India Office, London, England.

YOUR LORDSHIP,

WE, the British Indian subjects residing in the United States of America, some holding property and others intending to do the same in the Dominion of Canada, most respectfully approach your Honour with the hope that the following grievances under which we are suffering might be redressed.

Most of us own extensive property in British Columbia, and we have constantly to go there to look after and develop our interests, but owing to the attitude of the local immigration authorities and the interpretation of some of the Dominion Immigration Laws which we regard to be unconstitutional it has become impossible for us to go there, and we are consequently suffering heavy loss.

As concrete cases of unjustifiable restrictions, we beg to mention the following few typical ones from among many :—

1. Mr. Kapur Singh (or Niraiyan Singh), an educated and influential man in the Sikh community and holding valuable property and substantial shares in the Gurn Nanak Trust and Mining Company of Vancouver, B.C., an incorporated company with a capital of fifty thousand (\$50,000.00) dollars, of which he is also one of the directors, was called on business to Vancouver as the representative of the shareholders of the company residing in California, but was denied entrance three times by the immigration authorities.

2. Mr. Sohan Singh, who owned property worth about three thousand (\$3,000.00) dollars, was killed by an accident in the Rat Portage Lumber Mills of Vancouver, and his brother was coming from California to attend the funeral and look after the interests of the deceased, but was denied entrance, though his object was very clearly explained to the local immigration authorities.

3. Mr. Harnam Singh, a student studying in Seattle, Washington, and who originally landed and lived in Vancouver, B.C., for a long time, went to look after his property in Vancouver and see his friends, but was not allowed at first, and only on instructions from Ottawa and after he had furnished bonds for seven hundred and fifty (\$750.00) dollars was allowed, and his case is pending in the Courts.

4. Another Mr. H. Singh, a student and a relative of Mr. Hari Singh, the Pastor of the Sikh Temple and a man of great influence in that community, was denied entrance, though he produced to the authorities a letter from the British Consul of Portland proving his *bond fide* intention of visiting his friends and carrying on his studies.

Although we are prepared to submit to the conditions and restrictions against all British subjects, we are not allowed to enter Canada, where we are called constantly on business, and this even unjustly applies to our students who go to help by their knowledge acquired in America and European schools and colleges in the agricultural development of our property.

It seems to us that this kind of treatment is quite against the established principles of international commerce and is detrimental to the Imperial policy and our mutual and permanent benefit.

We feel that it is a great injustice done to the people of India by the Dominion Government by enacting laws which discriminate us from other British subjects and treat us as inferiors to such aliens as the Japanese, Germans, Italians and Greeks, and preventing any Hindu labourers, merchant, or student, whether coming to join parent, husband, son, or other relatives, and requiring them to show two hundred (\$200.00) dollars in cash before entering Canada.

We therefore request you to inquire into the matter personally in order that

the grievances might be removed. We are standing on our rights as British subjects, and justice and fair play is all that we want.

3202

No. 17.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

[Copy to India Office, 11 February, 1911. L.F.]

[Answered by No. 25.]

(No. 85.)

MY LORD,

Downing Street, 9 February, 1911.

WITH reference to Mr. Gironard's despatch, No. 352, of the 10th of August last,\* I have the honour to transmit to Your Excellency, to be laid before your Ministers, copy of a memorial† purporting to be signed by some three hundred British Indian subjects residing in the United States, on the subject of the immigration laws of Canada.

2. It will be seen that in this memorial stress is laid upon the difficulty experienced by Indians owning extensive property in British Columbia in visiting that Province in order to protect their interests, and I should be glad if your Ministers would be so good as to favour me with a report on this particular point. His Majesty's Government are already fully informed of the attitude of your Ministers with regard to Indian immigration in general, and the grounds upon which it is based, but they would be glad to know whether the existing legislation involves any real hardship in the case of persons desiring only to make temporary visits for business purposes.

I have, &c.,  
L. HARCOURT.

6707

No. 18.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Sent 6.20 p.m., 3rd March, 1911.)

TELEGRAM.

(Extract.)

(Paraphrase.)

Your telegram 27th February‡

The draft Treaty between United Kingdom and Japan has not yet been signed, and the following is therefore strictly confidential.

The Treaty does not alter the provisions of Treaty of 1894 as regards immigration. National treatment is accorded as regards entrance, travel, residence, commerce, and manufacture, and most-favoured-nation treatment is given as regards pursuit of industries, professions, and educational studies. The Japanese Ambassador believes that if Canada adheres to the Treaty the Japanese Government would be prepared to make a declaration that they have no intention of modifying their present policy as regards emigration to Canada, and he is now in communication with his Government on the subject.

—HARCOURT.

\* No. 15.

† Enclosure in No. 16.

‡ 6707 : not printed.



7457

No. 19.  
CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Sent 7.50 p.m., 7th March, 1911.)

TELEGRAM.

[Answered by No. 20.]

(Extract.)

(Paraphrase.)

\* \* \* \* \*

The Japanese telegram proceeds as follows:—"The Imperial Government intend to maintain their policy in regard to the restriction of Japanese immigration to Canada after the expiration of the present treaty with the latter. The understanding arrived at between the two Governments in 1908 on the subject of immigration is quite independent of the existing Treaty concluded between Japan and Canada in 1906, and does not terminate on the expiration of that Treaty between Japan and Canada."

I shall be glad to learn whether your Ministers are satisfied with the above assurance.—HARCOURT.

8179

No. 20.  
CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 10.20 p.m., 12th March, 1911.)

TELEGRAM.

[Copy to Board of Trade, 14 March, 1911.]

[Answered by No. 23.]

(Paraphrase.)

With reference to your telegram of March 7th\* as to Japanese Treaty, the statement of the Japanese Government that the arrangement of 1908 on the subject of emigration to Canada will be continued is quite satisfactory. My Ministers hope, however, that the dispositions on this subject included in Treaty with the United States will also be included in any treaty affecting Canada.—GREY.

8179

No. 21.  
CANADA.

COLONIAL OFFICE to FOREIGN OFFICE.

[Copy to Board of Trade, 14 March, 1911.]

[Answered by No. 22.]

SIR,

Downing Street, 14 March, 1911.

WITH reference to the letter from this Office of the 9th of March,† I am directed by Mr. Secretary Harcourt to transmit to you, to be laid before Secretary Sir E. Grey, copy of a telegram‡ from the Governor-General of the Dominion of Canada on the subject of the commercial treaty with Japan.

2. Mr. Harcourt understands that there are no formal stipulations as to immigration in the Treaty between Japan and the United States, and that the United States Government has accepted as adequate a formal assurance of the intention of the Japanese Government to restrict emigration to the United States. He would, however, be glad to receive definite information on this point in order that a suitable reply may be sent to Lord Grey's telegram.

I am, &c.,  
C. P. LUCAS.

\* No. 19.

† 7457: not printed.

‡ No. 20.

8544

No. 22.  
CANADA.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 17 March, 1911.)

SIR,

Foreign Office, March 16, 1911.

WITH reference to your letter, 8179/1911, of the 14th instant,\* I am directed by Secretary Sir E. Grey to enclose a printed copy of a despatch from His Majesty's Ambassador at Washington with reference to the Treaty of Commerce and Navigation recently concluded between the United States and Japan, which gives the information desired by the Secretary of State for the Colonies.

Mr. Harcourt will observe that, though no reference is made in the Articles of the Treaty to the immigration question, a declaration has been made by the Japanese Ambassador to the effect that the existing limitation of the emigration of labourers to the United States will be maintained by the Japanese Government with equal effectiveness as in the past three years.

The official text of the treaty is not yet in Sir E. Grey's possession, but a copy will be forwarded to the Colonial Office as soon as received.

I am, &c.,

F. A. CAMPBELL.

Enclosure in No. 22.

MR. BRYCE to SIR EDWARD GREY.

(Received March 8.)

(No. 58.)

SIR,

Washington, February 28, 1911.

WITH reference to my telegram, No. 36, of yesterday's date, I have the honour to transmit herewith the full text of the Treaty† of Commerce and Navigation concluded on the 21st instant between the United States and Japan. While it has been impossible as yet to secure an official copy of the treaty, I have been assured on very high authority that the text enclosed herewith is at least approximately correct.

This treaty is intended to replace the Treaty of 1894, which would not have expired until the 17th July, 1912, almost a year later than the treaties negotiated at that time with the other Powers. Had the Treaty of 1894 continued in force until next year, Japan might have been compelled to concede to other nations with whom she is negotiating similar treaties the advantages which the United States now enjoys under the older treaty. The Japanese Embassy here has, therefore, used every effort to obtain the immediate revision of the older instrument.

It will be observed that the new treaty contains no reference to the immigration question. In Article 2 of the Treaty of 1894 the following qualification was added to the provision declaring the right of the citizens of the two countries to full liberty of travel, residence, and trade in both countries:—

"It is, however, understood that the stipulations contained in this and the preceding article do not in any way affect the laws, ordinances, and regulations with regard to trade, the immigration of labourers, police and public security, which are in force, or which may hereafter be enacted, in either of the two countries."

A declaration has, however, been attached to the correspondence which accompanied the new treaty, when transmitted to the Senate for ratification, in the following terms:—

"In proceeding this day to the signature of the Treaty of Commerce and Navigation between Japan and the United States, the undersigned, Japanese Ambassador in Washington, duly authorised by his Government, has the honour to declare that the Imperial Japanese Government are fully prepared to maintain with equal effectiveness the limitation and control which they have for the last three years exercised in regulation of the emigration of labourers to the United States."

"Y. UCHIDA.

"February 21, 1911."

Most of the eighteen articles of the treaty show a divergence from the provisions of the former treaty on many important points. One of these is the reciprocal

\* No. 21.

† Not printed here



abandonment of most-favoured-nation treatment as to import duties. A protocol is added that "pending the conclusion of a special agreement relating to tariff, the provisions relating to tariff in the Treaty of the 22nd November, 1894, shall be maintained." Article 7 providing for mutual recognition of joint stock companies is also of interest.

The treaty becomes operative on the 17th July next, and will remain in force for twelve years.

The treaty was sent to the Senate for ratification on the 21st instant. It was feared that the senators from the Pacific Coast States would be reluctant to yield any provision which might be regarded as a safeguard against the immigration of Japanese labour. A resolution was, in fact, adopted by the State Senate of California, protesting against its approval. Little opposition has, however, come from that quarter, which seems to confirm the report that the representatives of the Pacific States in both Houses were consulted during the negotiations. The chief obstacle to its immediate approval was the opposition of the senator from Maine, Mr. Hale, who contended that the Treaty of 1858 stipulated what duties Japan was privileged to impose on imports from the United States, and demanded that the new treaty should contain a similar provision. Mr. Hale's opposition, however, probably originated rather in his present relations to the political situation in regard to reciprocity than in any specific objection to the treaty, which was approved on the 24th instant, without amendment.

The conclusion of the treaty is greeted with general satisfaction by the Press, and the hope is expressed that the relations of the two countries will be greatly improved by the successful issue of these negotiations. The Japanese Ambassador here beams with satisfaction, and the Secretary of State observes in a statement given to the Press:—

"The promptness of the Senate in giving its constitutional consent to the ratification of the treaty between the United States and Japan is especially gratifying because it so signally reflects the cordial feeling of friendship which America has for Japan, and because it will be rightly understood in Japan as one more of the signs of special amity which this Government has given from the beginning of Japan's relations with the Western world."

In other words, the State Department, where pro-Japanese sentiment is at present strongly represented, have made a demonstrative bid for Japanese good-will.

I have, &c.,  
JAMES BRYCE.

8544

No. 23.

CANADA.

THE SECRETARY OF STATE TO THE GOVERNOR-GENERAL.

(Sent 6 p.m., 24 March, 1911.)

TELEGRAM.

(Paraphrase.)

Your telegram 12th March.\* There are no formal stipulations as to immigration in new Treaty between United States and Japan, but declaration has been attached to correspondence that Japanese Government are fully prepared to maintain with equal effectiveness the limitation and control which they have for the last three years exercised in regulation of the emigration of labourers to the United States.

Despatch follows by mail.

Referring to my telegram 7th March,† I should add that Japanese Government stated that they were of opinion that there was no necessity for their giving an assurance to Canada regarding immigration, and that they did not think that any misunderstanding would arise in absence of such an assurance.—HARCOURT.

\* No. 20.

† No. 19.

8544

No. 24.

CANADA.

THE SECRETARY OF STATE TO THE GOVERNOR-GENERAL.

(Confidential (2).)

MY LORD,

Downing Street, 25 March, 1911.

WITH reference to my telegram of the 24th March,\* I have the honour to transmit to Your Excellency, for the information of your Ministers, the accompanying copy of a letter† from the Foreign Office on the subject of the Treaty of Commerce and Navigation recently concluded between the United States and Japan.

2. I have to add that His Majesty's Ambassador is being requested to forward a copy of the official text of the Treaty direct to you.

I have, &c.,  
L. HARCOURT.

13198

No. 25.

CANADA.

THE GOVERNOR-GENERAL TO THE SECRETARY OF STATE.

(Received 24 April, 1911.)

[Copy to India Office, 6 May, 1911. L.F.]

[Answered by No. 29.]

(No. 212.)

SIR,

Government House, Ottawa, Canada, 11 April, 1911.

WITH reference to your despatch, No. 85, of the 9th February last,‡ transmitting a copy of a memorial purporting to be signed by some three hundred British Indian subjects residing in the United States, on the subject of the Immigration Laws of Canada, I have the honour to transmit, herewith, for your information, copies of an approved minute of His Majesty's Privy Council for Canada setting forth the views of my responsible advisers.

I have, &c.,  
GREY.

Enclosure in No. 25.

CERTIFIED COPY of a Report of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 6th April, 1911.

(P.C. 704.)

The Committee of the Privy Council have had before them a report, dated 1st April, 1911, from the Secretary of State for External Affairs, to whom was referred a despatch, dated 9th February, 1911, from the Right Honourable the Principal Secretary of State for the Colonies, transmitting copy of a memorial, purporting to be signed by some three hundred British Indian subjects residing in the United States, on the subject of the Immigration Laws of Canada.

The Minister states that the assertion made in the memorial that the East Indian subjects residing in the United States are treated as inferior to aliens, such as Japanese, Germans, Italians, and Greeks, does not appear to be warranted by the facts.

The Minister desires to point out in this relation that the Government of Canada has adopted a selective and restrictive policy regarding immigration to which East Indians and all other immigrants are subject. According to the regulations that have been framed with a view to carrying out that policy, and which are now in force, all Asiatic immigrants, other than Chinese and Japanese, are required to have in their possession on entering Canada the sum of two hundred dollars as a guarantee of self support. In the case of Chinese immigrants they are each required, under the provisions of the Chinese Immigration Act, to pay a tax of five hundred dollars before they can be admitted into the country, and as for Japanese,

\* No. 23.

† No. 22.

‡ No. 17.



they are prohibited from coming into the country beyond a fixed number, which has been agreed upon between the Governments of Japan and Canada.

The Minister observes that the difficulty met by East Indians resident in the United States when crossing into Canada, and which forms the subject more particularly of the memorial above referred to, arises from a provision of the statutes under which all persons who do not come to Canada by a continuous journey from the country of their birth or citizenship are subject to exclusion. This provision was deemed necessary, owing to the fact that the United States exclusion laws are very strict in this regard, and if an immigrant who is, or who becomes, undesirable, and who is not a citizen of the United States, enters Canada from that country, there is no way in which this Government can require the Government of that country to take him back, in case he becomes undesirable after his entry into Canada. East Indians are not specially favoured by the United States Government, and, therefore, the exclusion provision of the United States laws are applied against them. This being the case, the Canadian authorities have no alternative but to apply the restrictive provisions of the Canadian laws as complained of in the memorial;

That the view expressed in the memorial that the action of the Canadian Parliament, or of the immigration authorities, in this relation, is detrimental to Imperial policy cannot be accepted, because it has always been understood that in the maintenance of Imperial interests such policy rested on the principle that each part of the Empire should be governed in the best interests of the people of that part, and that where self-government is established the views of the people, as expressed in legislation, should be considered as the best evidence of what constitutes Imperial interests in that part of the Empire.

The Minister further observes that citizens of Canada, if resident in, or attempting to enter, India, would have to conform to the laws as they exist there, whether they approved of, or were inconvenienced by, such laws or not. It is not felt that East Indian immigrants are entitled to claim more favourable consideration in Canada than the people of other British Dominions or friendly foreign States.

The Committee, on the recommendation of the Secretary of State for External Affairs, advise that Your Excellency may be pleased to forward a copy hereof to the Right Honourable the Principal Secretary of State for the Colonies.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,  
Clerk of the Privy Council.

21204

No. 26.

CANADA.

INDIA OFFICE to COLONIAL OFFICE.

(Received June 28, 1911.)

[Answered by L.F. transmitting copy of No. 30.]

India Office, Whitehall, London, S.W.,

28 June, 1911.

SIR,

With reference to Sir Charles Lucas's letters of the 6th\* and 23rd† May, Nos. 13198 and 15609, I am directed by the Secretary of State for India to transmit for the consideration of Mr. Secretary Harcourt a copy of a petition from British Indian subjects resident in the Dominion of Canada. A copy of the earlier petition of April, 1910, to which reference is made, was transmitted to your department in Mr. Campbell's letter of the 2nd June, 1910,‡ to which replies were made in Sir Charles Lucas's letters of the 11th June§ and 30th August.||

His Lordship has also received from Mr. L. A. Hall, Secretary, Hindu Friend Society (1002, Fort Street, Victoria, British Columbia), the *précis* of a petition to be addressed to the Imperial Conference, communicated in Sir C. Lucas's letter of the 23rd May.

His Lordship would be glad to learn whether H. Rahim, president of the meeting held in Vancouver on the 16th April, is the person to whom reference has

\* L.F. transmitting copy of No. 25.  
‡ No. 13.      † Transmitting copy of No. 15.

† No. 12.  
§ In Dominions No. 39.

frequently been made in the confidential reports furnished by the Dominion Government, notably in that transmitted in Sir Francis Hopwood's confidential letter of the 13th December last, No. 36276.\*

I have, &c.,  
ED. S. MONTAGU.

Enclosure in No. 26.

Vancouver, British Columbia, 1638, Second Avenue, W., Fairview.

HONOURABLE SIR,

WE, the citizens of British India residing in the Dominion of Canada, beg most respectfully to draw your attention to the following grievances as well as to the accompanying petition *re* some of the most grievous disabilities with which we have been laboring and earnestly urge that you take some action to redress them.

We regret to say that the petition in question was sent to you in April, 1910, but we have not yet been favoured either with any acknowledgment, or any assurance from you.

In the meantime the Immigration Laws are being applied with increased harshness, insult, and injustice against us and are being applied indiscriminately against our cultured and educated men, such as merchants, tourists, religious teachers, lecturers, and students, as well as labourers.

All the harshest regulations seem to be made especially against the people of India, as they apply to no other people besides us, and although we are subjects of the British Empire and have inalienable rights like other citizens of the Empire, we are suffering from the worst indignities and our disabilities are greater than even the Chinese and the Japanese. To such an extent has the application of the Immigration Acts against the people of India gone, that the Honourable Sir Wilfrid Laurier, in his speech in Vancouver, B.C., some time ago, remarked that not a single Hindu has been allowed to land in Canada within the past three years.

As loyal citizens of the Empire we feel that such invidious treatment is not calculated to promote the best interests of the Empire which we all have at heart, and we therefore most earnestly pray that these disabilities be removed. Further, as in the coming Imperial Conference one of the questions to be considered is the position of British Indians in the Dominions, and finding that you will represent India in the Conference, the British Indians residing in Canada held a mass meeting in Orange Hall, Vancouver, British Columbia, on April 16th, where the following resolutions were passed.

Be it resolved that—

*Resolution 1:*

Whereas it is imperative that the unjust disabilities placed on the people of India coming to Canada be removed, the Secretary of State for India be petitioned to move the Imperial Conference to the desired end.

Proposed by Mr. Pritam Singh.

Seconded by Mr. Balmu Kund.

Carried by all.

*Resolution 2:*

Whereas the Hindusthanis of Canada while confirming unflinchingly to carry out their duties to the British Empire, urge the Imperial authorities to provide that Oversea Dominions recognize the equal rights of British citizenship of the people of India.

Proposed by Mr. Kartar Singh.

Seconded by Mr. S. Bose.

Carried by all.

*Resolution 3:*

Whereas the interests of Hindus and Mahomedans are identical, we, the Mahomedans living in Canada and assembled in this meeting, declare that we are at one with the Hindus in approving all the resolutions passed in this meeting.

Proposed by Mr. Nawab Khan.

Seconded by Mr. H. Rahim.

Carried by all Mahomedans present.

\* Not printed.



## Resolution 4:

Whereas our previous petitions to the Canadian Government did not succeed in securing any assurance of any kind, and as our rights of British citizenship were completely ignored, we are appealing to the Imperial authorities although we mean no discourtesy to the Canadian Government.

Proposed by Mr. Sundar Singh.

Seconded by Mr. G. D. Kumar.

Carried by all.

H. RAHIM,  
President.  
BABOO SINGH,  
Secretary.

To the Right Honourable  
Earl of Crewe, K.G., P.C., M.A., F.S.A.,  
Secretary of State for India.

21204

No. 27.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

[Answered by No. 30.]

(Confidential.)

MY LORD,

Downing Street, 6 July, 1911.

I HAVE the honour to request Your Excellency to inform your Ministers that the Secretary of State for India has received a petition\* from British Indian subjects resident in the Dominion of Canada, of which a copy is enclosed, on the subject of the disabilities to which such subjects are liable in the Dominion.

2. I shall be glad to learn, for the information of Lord Crewe, whether Mr. R. Rahim, President of the meeting held at Vancouver on the 16th of April, is the person to whom reference has frequently been made in the confidential reports furnished by your Government, notably in that which was transmitted in your despatch, confidential, of the 11th of November last.†

I have, &amp;c.,

L. HARCOURT.

35557

No. 28.

CANADA.

INDIA OFFICE to COLONIAL OFFICE.

(Received November 4, 1911.)

[Answered by L.F. transmitting copy of No. 29.]

SIR,

India Office, Whitehall, London, S.W., 3rd November, 1911.

WITH reference to Mr. Montagu's letter of the 28th June last‡ and to Sir H. Just's confidential letter of the 8th June, No. 17549/11,§ I am directed by the Marquess of Crewe to transmit for the consideration of Mr. Secretary Harcourt a copy of a letter from the Government of India on the question of Indian immigration into the Dominion of Canada.

His Lordship would urge that the Dominion Government should be moved to allow greater facilities to British Indian subjects wishing to visit Canada temporarily for *bonâ fide* business purposes.

I have, &amp;c.,

ED. S. MONTAGU.

\* Enclosure in No. 26.

† 36276: not printed.

‡ No. 26.

§ In Dominions No. 39 (Imperial Conference).

Enclosure in No. 28.

GOVERNMENT OF INDIA to the SECRETARY OF STATE FOR INDIA.

(Department of Commerce and Industry.)

(No. 44 of 1911.)

MY LORD MARQUESS,

Simla, 14th September, 1911.

WE have the honour to acknowledge the receipt of your despatch No. 112 (Public), dated the 30th June, 1911, with which were forwarded papers on the question of Indian immigration into the Dominion of Canada. Your Lordship desired to be furnished with our views on the minute of the Canadian Privy Council, of the 6th April last, which formed an enclosure to the despatch.

2. In the Colonial Office letter, No. 85, dated the 9th February, 1911, a report was called for from the Canadian Government on the complaint made in a memorial from certain British Indians residing in the United States of America, to the effect that difficulties were placed in the way of Indians owning extensive property in British Columbia, when they proposed to visit that Province in order to protect their interests. His Majesty's Government desired to be informed whether the existing legislation in the Dominion involved any real hardship in the case of persons wishing only to make temporary visits for business purposes. We note that the minute of the Committee of the Privy Council on the memorial gives no specific answer on the point raised by the Colonial Office, but is confined to a defence of the policy of restriction adopted by the Colonial Government, and explains that no invidious discrimination is made against Indians as opposed to the people of other British dominions or friendly foreign States.

3. In this connection we would invite a reference to your telegram, dated the 9th June last, in which it is stated that the Canadian Government had not in practice extended the exemption, in favour of temporary visitors, contained in the Emigration Act, to wealthy Hindu merchants desiring to pay short visits from the United States to Canada, but required from them a written permit from the Minister, under Section 4 of the Act, before permitting them to enter the Dominion. It would appear from the present minute that, as a matter of fact, permits to visit Canada temporarily are refused to Indians residing in the United States, on the ground that it might be found difficult to return such people to that country, if they were found to be undesirable immigrants after entry into the Dominion. While we recognise that the apprehension entertained by the Government of Canada is not unreasonable, we are of opinion that it would be desirable that the Dominion Government should be moved to allow greater facilities to persons wishing to visit Canada temporarily for *bonâ fide* business purposes, by a freer issue of permits under Section 4 of the Immigration Act.

We have, &amp;c.,

HARDINGE OF PENSHURST.  
O'MOORE CREAGH  
GUY FLEETWOOD WILSON.  
J. L. JENKINS.  
R. W. CARLYLE.  
S. H. BUTLER.  
SAIYID ALI IMAM.  
W. H. CLARK.

To the

Secretary of State for India.

35557

No. 29.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

[Copy to India Office, November 11, 1911. L.F.]

(No. 903.)

SIR,

Downing Street, 10 November, 1911.

WITH reference to Earl Grey's despatch, No. 212, of the 11th April,\* I have the honour to transmit to Your Royal Highness a copy of a despatch† from the

\* No. 25.

† Enclosure in No. 28.



Government of India on the subject of Indian immigration into the Dominion of Canada.

I shall be glad if in laying this despatch before your Ministers you will invite their earnest consideration to the suggestion of the Indian Government that greater facilities should be allowed to British Indian subjects wishing to visit Canada temporarily for *bona fide* business purposes, by a freer issue of permits under Section 4 of the Immigration Act.

I have, &c.,  
L. HARCOURT.

39703

No. 30.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received December 11, 1911.)

[Copy to India Office, December 18, 1911. L.F.]

[Answered by No. 31.]

(Confidential.)

SIR,

Government House, Ottawa, 29 November, 1911.

WITH reference to your confidential despatch of the 6th July\* enclosing a copy of a petition from British Indian subjects resident in the Dominion of Canada, on the subject of the disabilities to which such subjects are liable in the Dominion, I have the honour to transmit, herewith, copies of an approved minute of the Privy Council for Canada setting forth the views of my responsible advisers.

You will observe that H. Rahim, who acted as president at the meeting held at Vancouver on the 16th April, 1911, is the same man to whom reference has frequently been made in previous confidential reports submitted on this subject.

I have, &c.,  
ARTHUR.

Enclosure in No. 30.

CERTIFIED copy of a Report of the Committee of the Privy Council, approved by His Royal Highness the Governor-General on the 24th November, 1911.

(P. C. 2650.)

The Committee of the Privy Council have had under consideration a report, dated 21st November, 1911, from the Secretary of State for External Affairs, to whom was referred a confidential despatch from the Secretary of State for the Colonies, dated 6th July, 1911, on the subject of the disabilities to which certain British East Indians resident in Canada are liable.

The Minister states, with special reference to the petition enclosed by the Colonial Secretary, that, as regards the allegations of the petitioners, it may be explained that the memorial is one of a series of similar petitions that have been received from time to time from East Indians resident in Canada, protesting against the operation of the existing Canadian laws and regulations, in so far as their particular nationality is concerned.

The Minister submits that it has been repeatedly pointed out, in reply to these petitions, that such laws and regulations do not apply exclusively to East Indians. An Order in Council was passed on the 9th May, 1910, requiring all Asiatics to be possessed of at least \$200 each as a condition of their entry into Canada. The only immigrants excepted under the regulation are persons who are natives or subjects of an Asiatic country in regard to which special statutory regulations are in force or of a country with which the Government of Canada has made a special treaty or agreement. There is a special law in force under which all Chinese, except

\* No. 27.

diplomatic and other duly accredited Government officials and their servants, persons born in Canada of Chinese parents, merchants, tourists, and teachers, are required to pay a head tax of five hundred dollars (\$500) before being allowed to enter into Canada, and there is also a special agreement with Japan under which immigration from that country is limited to a maximum number of entries each year. With these exceptions, all immigrants from Asiatic countries are dealt with under the regulations approved by the Order in Council of the 9th of May, 1910, above mentioned, so that there does not appear to be any good ground for the allegation contained in the petition that East Indians are labouring under grievous disabilities in so far as their nationality is concerned. As a matter of fact, the regulation complained of was not enacted with a view of discriminating against any particular race or nationality, but simply for the purpose of restricting the entry into Canada of persons who, although otherwise desirable, are unsuited to become successful settlers, owing to social and climatic conditions existing in this country.

The only other restrictive regulation affecting Asiatic immigration is the one passed under the authority of an Order in Council, also dated the 9th of May, 1910, under which all immigrants, without distinction, whether they come from Asia, Africa, Europe, or America, are prohibited from entering into Canada unless they have come by continuous journey on through tickets purchased in their own country. As this rule admits of no exception, it cannot possibly be taken as discriminating unduly against East Indians, and the protest entered by the petitioners cannot reasonably rest upon that ground.

With reference to the enquiry made in the despatch of the Secretary of State for the Colonies with respect to H. Rahim, who acted as President to the meeting held at Vancouver on the 16th of April, 1911, the Department of the Interior reports that, according to the information afforded by their records, this man is the same one to whom reference has frequently been made in previous confidential reports submitted on this subject.

The Committee, therefore, on the recommendation of the Secretary of State for External Affairs, advise that Your Royal Highness may be pleased to transmit a copy hereof, if approved, to the Right Honourable the Secretary of State for the Colonies for the information of His Majesty's Government.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,  
Clerk of the Privy Council.

39703

No. 31.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

[Copy to India Office, December 18, 1911. L.F.]

(Confidential.)

SIR,

Downing Street, 16 December, 1911.

I HAVE the honour to acknowledge the receipt of your Royal Highness's despatch, Confidential, of the 29th November,\* forwarding a minute of the Privy Council for Canada on the subject of the disabilities to which British Indian subjects are liable in the Dominion.

2. In reply, I have to request that you will be so good as to invite the attention of your Ministers to my despatch, No. 903, of the 10th of November,† in which I asked that your Ministers would give very earnest consideration to the suggestion of the Indian Government that greater facilities should be allowed to British Indian subjects who desire to visit Canada temporarily for business purposes.

I have, &c.,  
L. HARCOURT.

\* No. 30.

† No. 29.



## AUSTRALIA AND NEW ZEALAND.

4417

No. 32.

## NEW SOUTH WALES.

(Received in Colonial Office, 14 February, 1910.)

Act No. 28, 1909.

An Act to amend the Factories and Shops Act of 1896; and for other purposes.

[Assented to, 29th December, 1909.]

New section 42A.  
Hours of employment in Chinese and certain other factories.  
Act No. 1975 Victoria s. 42 (1).  
Penalty.  
*Ibid.* (2).

16. The following section is inserted next after section forty-two of the said Act:—

42A. (1) In any factory where any Chinese works, and in any other factory where any person is employed in preparing or manufacturing articles of furniture, no person shall work, or shall employ or authorise or permit any person whomsoever to work, on any day before half-past seven o'clock in the morning or after six o'clock in the evening, or on a Saturday after one o'clock in the afternoon, or on Sunday at any time whatever; and no portion of a factory used for the purpose of preparing or manufacturing goods or articles for trade or sale shall at any time be used as a sleeping place.

(2) If any person offends against any of the provisions of this section, he shall for each and every day in which he offends be liable on conviction to a penalty for the first offence not exceeding ten pounds, and for a second or subsequent offence not exceeding twenty-five pounds, and the registration of a factory the occupier of which is convicted under this section of a third offence shall be forthwith cancelled by the Minister.

(3) In any prosecution for an offence against this section, evidence—

(a) that at any time during which work is prohibited by this section in any factory, sounds have been heard, such as would ordinarily be heard if made by persons engaged in such factory in the usual work therein carried on; and

(b) that during such time any member of the police force or inspector was refused or could not gain immediate admission to such factory,

shall be *prima facie* proof that the provisions of this section have been contravened by the defendant.

(4) In order to meet the exigencies of trade, the Minister may, subject to the conditions and restrictions imposed in section thirty-seven, suspend the operation of this section relating to the working hours in any one or more factories for any period not exceeding two months.

Evidence.  
*Ibid.* (3).

Suspension of operation of section.  
*Ibid.* (4).

10606

No. 33.

## NEW ZEALAND.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 11 April, 1910.)

[Copy to Foreign Office, 1<sup>st</sup> April, 1910. L.F.]

(No. 15.)

My Lord,

Government House, Wellington, 27 February, 1910.

I HAVE the honour to inform your Lordship that I duly submitted to my Ministers for their consideration your despatch, No. 179, of the 24th September.\*

\* No. 38 in Dominions No. 10.

in which was enclosed a copy of a note from the Chinese Minister concerning legislation in New Zealand relating to the immigration of Chinese subjects into the Dominion.

2. I herewith forward to you a copy of a memorandum upon this matter, received from my Prime Minister, from which it will be seen that the New Zealand Government are prepared to agree to two of the five modifications suggested by the Chinese Government.

I have, &c.,  
PLUNKET,  
Governor.

Enclosure in No. 33.

## MEMORANDUM FOR HIS EXCELLENCY THE GOVERNOR.

Prime Minister's Office, Wellington, 24th February, 1910.

The Prime Minister presents his compliments and, in returning G. H. 695 of 1909, New Zealand laws *re* immigration of Chinese, begs to state that the proposals Nos. 1 and 5 of the memorandum of proposed modifications in the New Zealand Regulations for the Immigration of Chinese are agreed to, and that an amending Bill to make the changes operative will be introduced at the earliest opportunity. The period during which the immigrants will be permitted to remain in New Zealand will be fixed by the Minister of Customs in each case.

It is regretted that the remainder of the proposals, numbered 2, 3 and 4, cannot be acceded to.

J. G. WARD,  
Prime Minister.

37474

No. 34.

## NEW SOUTH WALES.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 7.40 a.m., 7 December, 1910.)

TELEGRAM.

[Answered by No. 35.]

Ministers have asked for my approval to following amended Regulation 366, in substitution for that at present in force bearing same number under Crown Lands Act, namely:—

In any proceedings held under provisions of Section 28 of the Crown Lands Amendment Act, 1905:—(1) Where two or more applications simultaneously made for original holdings are conflicting, whether severally or collectively, the local land board before dealing with the same shall cause a list of such applications to be drawn up which shall be classified as follows: "A," those made by applicants who are members of any of the European races; "B," those made by British subjects who are not members of any European race; and "C," those made by coloured persons who are aliens. (3) No applicant of Class B shall be admitted to any ballot so long as there is one or more *bond fide* and qualified applicants in Class A whose applications are unsatisfied, and no applicant of Class C shall be admitted to any ballot so long as there is one or more *bond fide* and qualified applicants of Class A or Class B whose applications are unsatisfied.

Other sections of Regulation, namely 2 and 4, remain as at present.

Please telegraph whether any objection to approval being given to amended Regulation.—CHELMSFORD.



37474

No. 35.

NEW SOUTH WALES.

THE SECRETARY OF STATE TO THE GOVERNOR.

(Sent 1.50 p.m., 9 December, 1910.)

TELEGRAM.

[Answered by No. 37.]

Your telegram 7 December.\* I earnestly trust that your Ministers will not press for clause in proposed form. His Majesty's Government take no exception to the proposed treatment of aliens on a different footing from British subjects, but they strongly deprecate differential treatment avowedly on racial grounds. His Majesty's Government have repeatedly expressed dislike of measures penalising non-Europeans *eo nomine*. Such measures tend to cause serious embarrassment in political relations both within and without the Empire. His Majesty's Government do not desire to interfere in any way with what they understand to be the aim of your Government, the grant of preference to European settlers, but if it is thought that that preference cannot be secured under the regulation as it now stands, or by modifying it so as to give wider discretion to the Board, they suggest that it be carried out by a language test on the model of that adopted in the Commonwealth immigration legislation which has received the assent of His Majesty's Government.

I request that you will urge these views on your Ministers, and will report to me their opinion.—HARCOURT.

1647

No. 36.

VICTORIA.

COLONIAL OFFICE TO SIR JOHN FULLER, BART., M.P.

(Extract.)

SIR, Downing Street, 9 February, 1911.

1. I am directed by Mr. Secretary Harcourt to transmit to you, for your information, copies of the Letters Patent† constituting the office of Governor of Victoria, and of the Royal Instructions‡ to the Governor.

2. I am to invite your special attention to Clause VII. of the Instructions relating to the reservation of Bills for the Royal Assent and to say that before assenting to any Bill passed by the Parliament of Victoria you should take care to secure from the Attorney-General of the State a certificate that you are not required under any law or under the Royal Instructions to reserve the Bill. You are, however, entitled to use your own discretion in reserving Bills even if such a certificate is furnished by the Attorney-General, and I am to recommend for your special consideration all Bills imposing disabilities *nominatim* on Asiatics, as such disabilities raise questions of Imperial interest. I am to add that in any case in which you feel doubt as to whether you should assent to a Bill or not it is open to you to apply to the Secretary of State by telegraph for instructions, and you are at liberty to defer either assenting to or reserving a Bill pending the receipt of the instructions for which you have applied.

3. It is, however, most desirable that whenever any Bill is introduced into Parliament which contains clauses affecting Asiatics, or otherwise of importance as bearing on Imperial interests, you should inform the Secretary of State by telegraph of the introduction of the Bill and of the purport of the clauses in order that, if necessary, representations may be made by the Imperial Government before the Bill is passed by Parliament.

I am, &c.,  
C. P. LUCAS.

\* No. 34.

† Not printed here.

4732

No. 37.

NEW SOUTH WALES.

THE GOVERNOR TO THE SECRETARY OF STATE.

(Received 13 February, 1911.)

[Answered by No. 38.]

(No. 2.)

SIR, State Government House, Sydney, 3rd January, 1911.

ADVERTING to your telegraphic despatch of the 9th December last, in reply to mine of the 6th idem,\* on the subject of the proposed regulation excluding coloured persons from participating in land ballots, I have the honour, at the instance of my Government, to enclose herewith, for your consideration, copy of a minute by the Minister for Lands on the subject.

2. I feel sure that it would not be practicable to adopt a language test in this matter. The local Land Boards are judicial bodies established under the "Crown Lands Acts," and consequently cannot be instructed to do, or refrain from doing, any special act except by regulations made and framed by the Executive Council, which thus have force of law. Also, in the majority of instances, Hindoos, Asiatics, &c., in this State are well educated, and in this respect compare favourably with the average Australian settler.

3. I have no alternative to suggest; the question is a complicated one, and one that is causing much alarm amongst a certain powerful section of the community. It should be observed that the regulation suggested by the Minister for Lands does not exclude Asiatics altogether from land ballots, but only excludes them from being classed as "first class" applicants.

I have, &c.,  
CHELMSFORD,  
Governor.

Enclosure in No. 37.

Re PROPOSED REGULATION AS TO HINDOOS AND OTHER ASIATICS ACQUIRING CROWN LANDS.

There has been considerable and widespread dissatisfaction for some time past owing to the action of certain local Land Boards in admitting to ballot for Crown Land Hindoo and other Asiatic applicants.

2. The trouble has been specially marked in the north coast districts of this State, where the crown lands are eagerly sought after. In one case a Hindoo was successful against 97 other applicants (for one block), all of whom were British-born and most of whom were natives of this State. These Hindoo applicants are undesirable settlers in many ways, and in any community of white settlers are regarded with much disfavour amounting almost to absolute aversion. The majority of the Hindoos in this State have started here as small hawkers or pedlars, and some have made and saved a fair amount of money; they are naturally acquisitive, and many of them have managed to acquire a general knowledge of dairy farming, which is the principal industry in the north coast districts.

3. Our local Land Boards are judicial bodies, established under the "Crown Lands Acts," and consequently cannot be instructed to do, or refrain from doing, any special act except by regulations made and framed by the Executive Council, which thus have force of law.

4. The clause of our "Crown Lands Acts" dealing with conflicting simultaneous applications is as follows:—

*Conflicting Applications.*

†28. The following provisions are substituted for the provisions contained in section twenty of the Crown Lands Act Amendment Act, 1903:—

Subject to regulations which may be made hereafter—

(a) The order of priority of conflicting applications for original‡ holdings other than those for additional holdings within areas set

\* Nos. 35 and 34.

† Vide section 7 of Crown Lands Act Amendment Act of 1891 (55 Vic. No. 1).

‡ Omitted, vide section 42 and Schedule, Crown Lands (Amendment) Act, 1908 (No. 30).

Conflicting  
applica-  
tions, how  
dealt with



apart under section four of this Act\* made, tendered, or lodged to or with the land agent simultaneously shall be determined by the Board; and where, in the opinion of the Board, any such applications have equal claims to priority, the order of their priority shall be determined by ballot. The Board may impose a penalty on the withdrawal or disallowance of any application by retaining the whole or such portion of the deposit money as may, after due inquiry, seem justifiable, and at its discretion disqualify such applicant from making any fresh application for such period as it may determine.

(b) Conflicting applications shall be dealt with by the Board in the order of their priority as determined in accordance with this section.

(c) Applications for conditional purchases and conditional leases of the same series shall, for the purposes of any ballot, be deemed to form together a single application for the whole of the land comprised within the said applications taken conjointly.

(d) No determination of the order of priority, or decision of the Board as to whether an applicant is or is not entitled to be included in a ballot to determine priority, shall be the subject of an appeal to the Land Appeal Court.

5. The existing regulation under this clause is :—

*Conflicting Simultaneous Applications for Original Holdings.*

(See also Regulation No. 367—Ballots.)

†366. When two or more applications simultaneously made for original holdings are conflicting, whether severally or collectively, the local Land Board in dealing with them shall proceed to determine the priority of such applications without requiring the attendance in person of the applicant, and where, in the opinion of the Board, any such applications have equal claims to priority, it shall direct that a ballot be held to determine priority among the applications of those applicants it deems qualified to satisfactorily occupy and develop the lands applied for; and at its discretion

- (i) May confirm the application which secures priority at the ballot;
- (ii) May refuse the applications of those applicants it deems not qualified as aforesaid and those applications which fail to secure priority at ballot.

6. Some of the local Land Boards hold the view that under this regulation the Board is entirely unfettered in its selection of applicants, and some of them have held that, provided an applicant is possessed of the experience and capital necessary to develop the land applied for he must (however objectionable he may be in every other way) be regarded as having equal claims to priority with any other applicant having such necessary capital and experience.

7. There are only two ways out of the difficulty, which *must* be overcome: One is to frame such a regulation as the following :—

*Conflicting simultaneous Applications for Original Holdings.*

366. In any proceedings held under the provisions of section 28 of the "Crown Lands Amendment Act, 1905,"—

(1) Where two or more applications simultaneously made for original holdings are conflicting, whether severally or collectively, the local Land Board, before dealing with the same, shall cause a list of such applications to be drawn up, which shall be classified as follows :—

(a) Those made by applicants who are members of any of the European races;

\* Added, vide section 42 and Schedule, Crown Lands (Amendment) Act, 1908 (No. 30).

† As amended by Gazette notice of 28th August, 1907.

(b) Those made by British subjects who are not members of any European race; and

(c) Those made by coloured people who are aliens.

(2) In any such proceedings the Board shall, for the purpose of determining the order of priority of the same, deal with the applications in each of such classes separately and in the order hereinbefore set forth; and where, in the opinion of the Board, the applications in any such class have equal claims to priority, having regard to the applicant's qualifications to satisfactorily occupy and develop the lands applied for, it shall direct that a ballot be held to determine the priority of the applications in such class.

(3) No applicant of Class B shall be admitted to any ballot so long as there are one or more *bonâ fide* and qualified applicants in Class A whose applications are unsatisfied, and no applicant of Class C shall be admitted to any ballot so long as there are one or more *bonâ fide* and qualified applicants of Class A or Class B whose applications are unsatisfied.

(4) Subject to the provisions hereinbefore contained when two or more applications simultaneously made for original holdings are conflicting as aforesaid, the local Land Board in dealing with them shall proceed to determine the priority of such applications without requiring the attendance in person of the applicant; and at its discretion—

- (i) May confirm the application which secures priority at the ballot;
- (ii) May refuse the applications of those applicants it deems not qualified as aforesaid, and those applications which fail to secure priority at ballot;

and the other is to remove from office and continue to do so every Land Board which allows Asiatics to the ballot as first class applicants. This latter course is almost unthinkable, but it will be our only alternative if we cannot make a regulation to exclude these people from being classed as "first class applicants."

8. In framing the regulation submitted herewith, it will be seen that we have been careful not to exclude Asiatics altogether, but only to exclude them from being classed as "first class" applicants.

9. A similar regulation could be made without question giving natives of Australia priority over British people living in Australia, and no objection would be taken to such, as we have the right to sell our lands to whom we please, so it seems that it is only because we draw the colour line that our proposed regulation is held up.

10. A language or education test is of no value in this instance because it would be utterly ineffective unless instructions of a very definite character could be issued to the Land Boards, and such could only be issued to them in the form of a regulation instructing them to put the language or education test only to Asiatics, and a regulation giving definite instructions such as these would apparently be just as objectionable as the one now proposed.

11. The Customs officials, not being members of a judicial body, *may* be instructed as to how and to whom to apply the language or education test, and this need not be done by regulation, as would be essential in the case of Land Boards because of the latter being judicial bodies, and even if such a regulation could be made, the application of it would be so cumbersome that it would clog the Land Board work and so cause a block to settlement.

12. I should like to point out that a municipality has the power to restrict Asiatics or any other class of people to certain streets and quarters in our towns; a private land holder may sell his land to whom he pleases, so surely the State should have similar powers.

13. The State may refuse hawkers' and other classes of licences to undesirable applicants, but if we cannot make a regulation such as is proposed we cannot prevent such from becoming settlers on our lands.

14. On the northern rivers, where many of these undesirables have obtained farms the white settlers cannot leave their wives and families on the adjacent properties without protection, nor will the women folk stay on the farms if their men folk are away, and the result is that if a farmer wishes to come to town on business



he has to bring with him the whole of his family, so that he may be sure that they will not be molested in his absence. This state of affairs is absolutely intolerable, and a way must be found to prevent the present undesirable condition of things being aggravated by adding to the number of these undesirable settlers.

15. We would therefore respectfully ask that the regulation which is being proposed be allowed to be gazetted, so that it shall have the force of law.

3rd January, 1911.

NIEL NIELSEN.

4732

No. 38.

NEW SOUTH WALES.

THE SECRETARY OF STATE to THE GOVERNOR.

(No. 27.)

MY LORD.

Downing Street, 10 March, 1911.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch, No. 2, of the 3rd January,\* forwarding a copy of a minute by the Minister of Lands on the subject of the proposed regulation giving priority in land ballots to applicants of European races.

2. I have given careful consideration to Mr. Nielsen's account of the circumstances which have led to this regulation being proposed, but his minute does not appear to me to dispose of the objections to a regulation which differentiates expressly against persons of Asiatic origin.

3. I gather from the terms of his minute that the difficulty which it is desired to meet arises from the bad character of some of the Asiatic applicants whom the Land Boards have nevertheless felt themselves bound to admit to the ballots upon equal terms with other applicants.

4. In view of the criticisms which have been urged, I do not desire to press the suggestion, made in my telegram of the 9th of December,† that the case should be met by the imposition of a language test, but it appears to me that the result desired by your Ministers might be achieved by means less open to objection than those which they have proposed.

5. I would ask you to suggest to them that the regulations should be so amended as to make it clear that the Land Boards are entitled to refuse applications from persons of bad character. It would thus be possible to exclude the undesirable Asiatic applicants to whom Mr. Nielsen refers, without introducing a discrimination, not easy to defend, based solely upon the ground of race.

I have, &c.,  
L. HARCOURT.

9142

No. 39.

NEW SOUTH WALES.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 7.30 a.m., 21st March, 1911.)

TELEGRAM.

[Answered by No. 40.]

Anxious for reply to my despatch of January 3rd,\* land ballots.—CHELMSFORD.

\* No. 37.

† No. 35.

9142

No. 40.

NEW SOUTH WALES.

THE SECRETARY OF STATE to THE GOVERNOR.

(Sent 1 p.m., 28 March, 1911.)

TELEGRAM.

Your telegram, 21 March.\* See my despatch 10 March.† Hope to discuss matter with your Premier when in England.—HARCOURT.

9142

No. 41.

NEW SOUTH WALES.

SIR CHAS. LUCAS to Mr. MacGOWEN.

DEAR MR. MACGOWEN,

Downing Street, 22 May, 1911.

ENCLOSED is the land regulation as Mr. Harcourt would like to see it amended. In its new form it seems to him that the wishes of your Government can be carried out as well as under the old regulation, without using terms which might give offence or making invidious distinctions.

If you feel able to accept it Mr. Harcourt would send it out by mail to the Acting Governor, intimating that he had consulted you on the subject, or if you propose first to telegraph to your colleagues he will, of course, await the reply. Should there be any point on which you are not satisfied, Mr. Harcourt would like me to discuss it with you. Mr. Harcourt very much appreciates your readiness to try and meet his views in the matter.

I return your papers.

Yours, &c.,  
C. P. LUCAS.

Enclosure in No. 41.

PROPOSED REGULATION.

Conflicting simultaneous Applications for Origin Holdings.

366. In any proceedings held under the provisions of Section 28 of the "Crown Lands Amendment Act, 1905"—

- (1) Where two or more applications simultaneously made for original holdings are conflicting, whether severally or collectively, the Local Land Board, before dealing with the same, shall cause a list of such applications to be drawn up, which shall be classified as follows:—
  - (a) Those made by applicants other than non-European aliens;
  - (b) Those made by non-European aliens;
- (2) In any such proceedings the Board shall for the purpose of determining the order of priority of the same, deal with the applications in each of such classes separately, and in the order hereinbefore set forth: and where, in the opinion of the Board, the applications in any such class have equal claims to priority, having regard to the applicant's qualifications to satisfactorily occupy and develop the lands applied for, it shall direct that a ballot be held to determine the priority of the applications in such class.
- (3) In determining the question of the admission of any applicant to any ballot it shall be the duty of the Board to consider whether the applicant is qualified by reason of character, habits, standard of living or other circumstances to occupy satisfactorily and develop the lands applied for, and no applicant shall be admitted to any ballot unless the Board be satisfied he is so qualified. No applicant of Class B shall be admitted to any ballot so long as there are one or more *bonâ fide* and qualified applicants of Class A whose applications are unsatisfied.

\* No. 39.

† No. 38.



- (4) Subject to the provisions hereinbefore contained, when two or more applications simultaneously made for original holdings are conflicting as aforesaid, the Local Land Board in dealing with them shall proceed to determine the priority of such applications without requiring the attendance in person of the applicant: and at its discretion:—

- (i) May confirm the application which secures priority at the ballot;
- (ii) May refuse the applications of those applicants it deems not qualified as aforesaid, and those applications which fail to secure priority at ballot.

May, 1911.

39226

No. 42.

QUEENSLAND.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 7.40 a.m., 6th December, 1911.)

TELEGRAM.

[Answered 1st January, 1912 (41540).]

Bill introduced into Parliament for restriction of lease of land to aliens. Lease will include any interest less than ownership. Bill introduced states that lease of land must not exceed five acres unless alien has obtained certificate he is able to read and write from dictation in such language as the Secretary for Public Lands directs. Should I assent?—MACGREGOR.

39226

No. 43.

QUEENSLAND.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 44.]

SIR,

Downing Street, 9 December, 1911.

I AM directed by Mr. Secretary Harcourt to transmit to you, to be laid before Secretary Sir Edward Grey, copy of a telegram\* from the Governor of Queensland, enquiring whether he may assent to a Bill which has been introduced into the Queensland Parliament to restrict the lease of land to aliens.

2. The proposed restriction is an addition to the limitations on the right of aliens to acquire land in Queensland embodied in Sections 59, 62, and 94 of the Land Act of 1910, which, as Sir E. Grey will observe from the enclosed copy,† merely reproduced previous legislation in this respect. These sections deal only with Crown Lands, but the Governor's telegram is couched in general terms.

3. Mr. Harcourt will be glad to learn whether, in Sir E. Grey's opinion, there is any objection on treaty grounds to the passing of the Bill in the proposed form. He raises this point, which was not raised in connexion with the existing sections of the Act of 1910, because of the possibility that the provision in its present extended form may be held to run counter to treaty stipulations guaranteeing national treatment—(a) as regards the acquisition and disposal of property, as for example that contained in Article 15 of the Treaty of Commerce and Navigation with Italy of 15th June, 1883; (b) in matters of commerce, as for example Article 1 of the same Treaty.

4. It is presumed that the obligation to give national treatment in matters of commerce could not be held to confer upon an alien a right to the same treatment as a British subject with regard to a "land selection," but it is possible that a case might arise in which an alien might contend that a lease of land in excess of five acres was necessary for his commercial purposes, and that his legal inability to obtain such a lease constituted a breach of his treaty rights.

\* No. 42.

† Not reprinted.

5. Mr. Harcourt does not apprehend that any substantial difficulty would arise in the case of any applicant of European nationality, as he does not doubt that the new legislation has been drafted with a view to meeting the case of Asiatic aliens. It is very desirable, if possible, that the Bill should be accepted, as the form of excluding words adopted is in accordance with previous models accepted by His Majesty's Government, and, unless Sir Edward Grey sees any strong objection, Mr. Harcourt would propose to authorise the Governor to assent.

6. I am to ask for a very early reply to this letter.

I am, &c.,

HENRY LAMBERT,

For the Under-Secretary of State.

41540

No. 44.

QUEENSLAND.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received December 30, 1911.)

[See 1539, January 20, 1912.]

SIR,

Foreign Office, December 29th, 1911.

I AM directed by Secretary Sir E. Grey to state, for the information of Mr. Secretary Harcourt, that he has carefully considered your letter, No. 39226/1911, of the 9th instant,\* enclosing a copy of a telegram from the Governor of Queensland enquiring whether assent may be given to a Bill which has been introduced into the Queensland Parliament to restrict the lease of land in that Colony.

Article 15 of the Treaty concluded on the 15th June, 1883, between the United Kingdom and Italy confers upon foreign subjects an absolute right of acquiring, possessing, and disposing of real property in those of His Majesty's Colonies and foreign possessions to which, under Article XIX., the stipulations of the Treaty are applicable.

Queensland acceded to this Treaty on the 10th March, 1884, and as there is no clause enabling British Colonies to withdraw the terms thereof are binding upon the Government of Queensland at the present time.

In so far, therefore, as the Bill now in question purports to limit in any way the absolute right of foreign subjects to acquire, possess, and dispose of real property in Queensland, Sir E. Grey considers that it must be held to violate the provisions of the above-mentioned treaty between this country and the Italian Government.

There is, therefore, in Sir E. Grey's opinion, objection on treaty grounds to the passing of the Bill in the proposed form.

I am, &c.,

LOUIS MALLET.

\* No. 43.



## APPENDIX.

## CANADA.

3-10 EDWARD VII.

Chap. 27.

AN ACT respecting Immigration.

(Extracts.)

[Assented to 4th May, 1910.]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

## SHORT TITLE.

1. This Act may be cited as *The Immigration Act*.

Short title.

## INTERPRETATION.

2.—(d) "domicile" means the place in which a person has his present home, or in which he resides, or to which he returns as his place of present permanent abode, and not for a mere special or temporary purpose. Canadian domicile is acquired for the purposes of this Act by a person having his domicile for at least three years in Canada after having been landed therein within the meaning of this Act: Provided that the time spent by a person in any penitentiary, gaol, reformatory, prison, or asylum for the insane in Canada shall not be counted in the three-year period of residence in Canada which is necessary in order to acquire Canadian domicile. Canadian domicile is lost, for the purposes of this Act, by a person voluntarily residing out of Canada, not for a mere special or temporary purpose, but with the present intention of making his permanent home out of Canada unless and until something which is unexpected, or the happening of which is uncertain, shall occur to induce him to return to Canada:

"Domicile."

How

Canadian

domicile

acquired.

Provided.

How

Canadian

domicile

lost.

(e) "alien" means a person who is not a British subject;

"Alien."

(f) "Canadian citizen" means—

"Canadian

citizen."

i. a person born in Canada who has not become an alien;

ii. a British subject who has Canadian domicile; or,

iii. a person naturalized under the laws of Canada who has not subsequently become an alien or lost Canadian domicile.

Provided that for the purpose of this Act a woman who has not been landed in Canada shall not be held to have acquired Canadian citizenship by virtue of her husband being a Canadian citizen; neither shall a child who has not been landed in Canada be held to have acquired Canadian citizenship through its father or mother being a Canadian citizen;

Provided.

(g) "immigrant" means a person who enters Canada with the intention of acquiring Canadian domicile, and for the purposes of this Act every person entering Canada shall be presumed to be an immigrant unless belonging to one of the following classes of persons, hereinafter called "non-immigrant classes":—

"Immigrant."

"Non-immigrant

classes."

Canadian

citizens.

Domiciled

residents.

Diplomatic.

Military.

Tourist.

Students.

i. Canadian citizens; and persons who have Canadian domicile.

ii. Diplomatic and consular officers, and all accredited representatives and officials of British or foreign governments, their suites, families and guests, coming to Canada to reside or to discharge any official duty or to pass through in transit.

iii. Officers and men, with their wives and families, belonging to or connected with His Majesty's regular naval and military forces.

iv. Tourists and travellers merely passing through Canada to another country.

v. Students entering Canada for the purpose of attendance, and while in actual attendance, at any university or college authorized by statute or charter to confer degrees; or at any High school or collegiate institute recognized as such for the purpose of this Act by the Minister.

vi. Members of dramatic, musical, artistic, athletic or spectacular organizations entering Canada temporarily for the purpose of giving public performances or exhibitions of an entertaining or instructive nature; and actors, artists, lecturers, musicians, priests and ministers of religion, professors of colleges or other educational institutions, and commercial travellers, entering Canada for the temporary exercise of their respective callings.

Professional.

vii. Holders of a permit to enter Canada, in force for the time being, in form A of schedule one to this Act, signed by the Minister or by some person duly authorized: Provided that whenever in the opinion of the Minister or Superintendent of Immigration or Board of Inquiry or officer acting as such, any person has been improperly included in any of the non-immigrant classes, or has ceased to belong to any of such classes, such person shall thereupon be considered an immigrant within the meaning of this Act and subject to all the provisions of this Act respecting immigrants seeking to enter Canada.

Holders of

permit to

enter Canada.

Provided.

(h) "family" includes father and mother, and children under eighteen years of age;

"Family."

(i) "head of family" means the father, mother, son, daughter, brother or sister upon whom the other members of the family are mainly dependent for support;

"Head of

family."

(j) "passenger" means a person lawfully on board any ship, vessel, railway train, vehicle or other contrivance for travel, or transport, and also includes any person riding, walking or otherwise travelling across any international bridge or highway; but shall not be held to include the master or other person in control or command of such vessel, ship, railway train, vehicle, bridge, highway or other contrivance for travel or transport, or any member of the crew or

"Passenger."



**staff thereof;** or military or naval forces and their families who are carried at the expense of the Government of the United Kingdom, or the Government of any British Dominion or Colony: **Provided** that any member of the crew of a ship or of the staff of a railway train or other contrivance for travel or transport who deserts or is discharged in Canada from his ship or railway train or other contrivance for travel or transport shall thereupon be considered a passenger within the meaning of this Act;

**"Stowaway."** (k) "stowaway" means a person who goes to sea secreted in a ship without the consent of the master or other person in charge of the ship, or of a person entitled to give such consent; or a person who travels on any railway train or other vehicle without the consent of the conductor or other person authorized to give such consent.

#### PROHIBITED CLASSES.

**Permit to enter Canada.** 4. The Minister may issue a written permit authorizing any person to enter Canada without being subject to the provisions of this Act. Such permit shall be in the form A of the schedule to this Act, and shall be expressed to be in force for a specified period only, but it may at any time be extended or cancelled by the Minister in writing. Such extension or cancellation shall be in the form AA of the schedule to this Act.

#### APPOINTMENT, POWERS, AND PROCEDURE OF BOARDS OF INQUIRY.

**Cases where no appeal allowed from Board.** 18. There shall be no appeal from the decision of such Board of Inquiry as to the rejection and deportation of immigrants, passengers or other persons seeking to land in Canada, when such decision is based upon a certificate of the examining medical officer to the effect that such immigrants, passengers or other persons are afflicted with any loathsome disease, or with a disease which may become dangerous to the public health, or that they come within any of the following prohibited classes, namely, idiots, imbeciles, feeble-minded persons, epileptics and insane persons: **Provided** always that Canadian citizens and persons who have Canadian domicile shall be permitted to land in Canada as a matter of right.

**Proviso as to Canadian citizens.**

#### REGULATIONS AS TO MONETARY AND OTHER REQUIREMENTS FROM SPECIFIED CLASSES OF IMMIGRANTS.

**Immigrants may be required to possess prescribed amount of money.** 37. Regulations made by the Governor in Council under this Act may provide as a condition to permission to land in Canada that immigrants and tourists shall possess in their own right money to a prescribed minimum amount, which amount may vary according to the race, occupation or destination of such immigrant or tourist, and otherwise according to the circumstances; and may also provide that all persons coming to Canada directly or indirectly from countries which issue passports or penal certificates to persons leaving such countries shall produce such passports or penal certificates on demand of the immigration officer in charge before being allowed to land in Canada.

**Prohibition of immigrants not coming to Canada by continuous journey.**

**Prohibition of landing of passengers brought by companies neglecting to comply with provisions of this Act.**

**Prohibition of specified classes of immigrants and closing of specified ports.**

**Duty of companies to re-convey rejected immigrants to country of birth or citizenship.**

**Penalty.**

38. The Governor in Council may, by proclamation or order whenever he deems it necessary or expedient,—

(a) prohibit the landing in Canada or at any specified port of entry in Canada of any immigrant who has come to Canada otherwise than by continuous journey from the country of which he is a native or naturalized citizen, and upon a through ticket purchased in that country, or prepaid in Canada;

(b) prohibit the landing in Canada of passengers brought to Canada by any transportation company which refuses or neglects to comply with the provisions of this Act.

(c) prohibit for a stated period, or permanently, the landing in Canada, or the landing at any specified port of entry in Canada, of immigrants belonging to any race deemed unsuited to the climate or requirements of Canada, or of immigrants of any specified class, occupation or character.

39. When any immigrant or other person is rejected or ordered to be deported from Canada, and such person has not come to Canada by continuous journey from the country of which he is a native or naturalized citizen, but has come indirectly through another country, which refuses to allow such person to return or be returned to it, then the transportation company bringing such person to such other country shall deport such person from Canada to the country of which he is a native or naturalized citizen whenever so directed by the Minister or Superintendent of Immigration and at the cost of such transportation company, and in case of neglect or refusal so to do, such transportation company shall be guilty of an offence against this Act, and shall be liable to a fine of not more than five hundred dollars and not less than twenty dollars for each such offence.



Dominions

No. 22.

CONFIDENTIAL.

MEMORANDUM ON UPPER HOUSES IN THE  
DOMINIONS.

UPPER Houses in the Dominions are constituted in one of three ways, either—

- (a.) By nomination by the Governor, who acts in making such nominations on the advice of his Ministers for the time being ;
- (b.) By election, such election taking place, as a rule, on a somewhat restricted franchise as compared with the franchise for the Lower House, and, in several cases, certain qualifications beyond those necessary for membership of the Lower House being required from Legislative Councillors ;
- (c.) By a combination of nomination and election, a method now prevailing only in the Upper House of the Parliament of the Union of South Africa, and one which has not yet been put into practice in that case.

There has never existed in the Colonies a hereditary legislative body. The policy of creating a hereditary Upper House has indeed been considered. After the American War of Independence, the British Government decided to grant a representative form of constitution to Canada. At the same time, they were anxious to introduce certain safeguards against democracy which had been found wanting in the old North American Colonies. In these Colonies the Upper Houses had been nominated, but had failed on the whole to maintain their position against the Lower Houses. Accordingly Lord Grenville, in his despatch to Lord Dorchester of the 20th October, 1789,\* in which he enclosed the draft of a Bill which became the Act of 1791, stated that it was intended to appoint the members of the Upper Chamber for life and during good behaviour, provided that they resided in the Province. It also said that it was the King's intention to confer upon those whom he nominated to the Council "some mark of honour, such as a provincial baronetage, either personal to themselves or descendible to their eldest sons in lineal succession," adding that if there was, in after years, a great growth of wealth in Canada, it might be possible at some future date to "raise the most considerable of these persons to a higher degree of honour." The object of these regulations, he wrote, "is

\* Shortt and Doughty, "Documents relating to the Constitutional History of Canada," 1759-1791, p. 663.



both to give to the upper branch of the Legislature a greater degree of weight and consequence than was possessed by the Councils in the old Colonial Governments, and to establish in the provinces a body of men having that motive of attachment to the existing form of Government which arises from the possession of personal or hereditary distinction."

In writing as above, Grenville did not state in so many words that the Government contemplated making appointment to the Legislative Council hereditary in certain cases, but merely that it was proposed to give some title to certain members of the Council, which title might be made hereditary; nor was any clause dealing with the subject included in the draft of the Bill which was sent to Lord Dorchester. The latter,\* however, rightly understood that what Pitt and his colleagues had in their minds was to give to each of the two provinces into which Canada was to be divided an Upper House which might develop into a House of Lords; and his answer was that, while many advantages might result from a hereditary Legislative Council distinguished by some mark of honour, if the condition of the country was such as to support the dignity, "the fluctuating state of property in these provinces would expose all hereditary owners to fall into disregard." He recommended, therefore, that for the time being the members of the Council should merely be appointed during life, good behaviour, and residence in the provinces.

"When the Bill was introduced into Parliament, the provisions dealing with this subject were chiefly attacked by Fox, who expressed himself in favour of an elected Council, though with a higher property qualification than would be required in the case of the Lower House or Assembly. The clauses were carried in a permissive form empowering the King, whenever he thought fit to confer upon a British subject by Letters Patent under the Great Seal of either of the provinces a hereditary title of honour, to attach to the title at his discretion a hereditary right to be summoned to the Legislative Council, such right to be forfeited by the holder for various causes including continual absence from the province, but to be revived in favour of the heirs. Nothing came of this attempt to create a hereditary second chamber in the two provinces of Upper and Lower Canada; no such aristocracy was brought into being, as when the French King and his Ministers built up the French Canadian community on a basis analogous to the old feudal system of France; but nevertheless Pitt's proposals cannot be condemned as fantastic or unreal. They were honestly designed to meet a defect which had already been felt in the British Colonies, and which must always be felt in new countries, the lack of a conservative element in the Legislature and in the people, the absence of dignity and continuity with the past, and the want of some balance against raw and undiluted democracy which has not, as in older lands, been trained to recognise that the body politic consists of more than numbers."†

The system of nomination for the Upper House has prevailed in Canada, an experiment with a House partly

\* See his despatch of February 8, 1790, in Shortt and Doughty, *op. cit.*, p. 675.

† See Sir C. Lucas, "History of Canada," 1763-1812, pp. 251, 252.

elective and partly nominee from 1856 to 1867 having proved a failure, and the Upper House of Newfoundland has always been nominated.

In the case of the Australasian Colonies very full discussions took place locally as to the mode of constituting the Upper House, and the question of establishing hereditary dignities was among the alternatives which were mooted, but it was practically rejected unanimously on every hand. In the case of New Zealand and New South Wales the principle of nomination was accepted, and the example of New South Wales was followed in Queensland. In that instance, however, the choice of the form of constitution was not altogether uninfluenced by the fact that legal power existed for the Crown to create a new Colony out of the territory of New South Wales, and to give it a constitution similar to that of New South Wales, which precluded the creation of an elective Upper House. South Australia, Tasmania, and Victoria all preferred elective Upper Houses, and in the case of Western Australia, though a nominee House was at first set up, it was provided in the Constitution Act that the Council should become elective when either six years had elapsed from the date of the first summoning of the Legislative Council or the population of the Colony had reached the number of 60,000, and in 1894 the Council became elective.

In the case of the Cape an elective Council was decided upon by the Imperial Government in consultation with the local Government. In Natal the Colony preferred a system of nomination, and the precedent of Natal was followed in the grant of Responsible Government to the Transvaal and the Orange River Colony. The Union of South Africa has adopted a system of joint nomination and election, thus embodying the practice both of the Cape and of the other Colonies.

The following account summarises the present constitution of each of the Upper Houses in the Dominions and the powers of the Upper House as compared with the Lower House:—

#### CANADA.

##### Composition.

The Senate of Canada consists at present of eighty-seven members, nominated for life by the Governor-General, and so chosen that twenty-four belong to Ontario, twenty-four to Quebec, and the remainder to the other provinces of the Dominion, viz.: Nova Scotia, 10; New Brunswick, 10; Prince Edward Island, 4; British Columbia, 3; Manitoba, 4; Saskatchewan, 4; Alberta, 4. Senators must be 30 years of age, possess property worth 4,000 dollars, and reside in the provinces for which they are nominated. In nominating Senators, the Governor-General acts in practice, though he is not required by law to do so, on the advice of Ministers. The House of Commons, of 214 members, lasts for five years, unless sooner dissolved.

##### Powers.

The Senate of Canada has, in theory, equal powers with the House of Commons, except in so far that Bills to appropriate revenue or impose taxes must originate in the House of Commons. In practice, however, the Senate of Canada, while it has exercised the right to amend or reject ordinary legislation, has not amended money Bills, and while it has rejected Bills involving Government expenditure on objects (*e.g.*, railways) of which it did not approve, it has never rejected an



Appropriation Act, nor has it rejected, so far as appears, any Bill merely intended for the purpose of raising money.

The weak position of the Senate is unquestionably due to the fact that it is a nominee body. In theory, it should have represented in some degree the interests of the provinces in Parliament, but this purpose it has certainly and completely failed to carry out. As members are nominated for life, and as the number is fixed, the House cannot be "swamped" save to a very limited extent, the British North America Act, sec. 26, providing that the Governor-General may recommend to the Crown the addition of three or six members only. This provision, which has never actually been used, was evidently intended merely to meet the case when the two parties in the Senate were almost equally balanced.

The situation in Canada is somewhat abnormal, as one political party has held office continuously since 1896. On its coming into office, the Senate, the members of which had mainly been chosen by their predecessors, was somewhat hostile to the new Administration, and in 1897 and 1898 rejected certain measures submitted to them, but of late years this hostility has disappeared, partly owing to the death of Senators and their replacement by nominees of the new Government, but partly by the general feeling in Canada that a nominee House is not entitled to oppose the wishes of the people. Projects for the reconstruction of the House have been time after time brought forward and discussed in both Houses of Parliament in recent years, but an alteration in the constitution requires the passing of an Imperial Act, and the Government do not seem inclined to take any practical steps to strengthen the Upper House.

#### QUEBEC.

There is an Upper House of twenty-four members, nominated for life, one for each division of the Province by the Lieutenant-Governor, who acts in practice on the advice of Ministers. The Lower House of seventy-four members is elected by adult suffrage for four years.

Disputes between the Upper and the Lower Houses have not been common in recent years, and it is understood that the Upper House now exercises no control either by amendment or rejection over the Lower House in financial matters. Other Bills it can freely amend or reject, but inasmuch as it is a nominee house it has not asserted any marked individuality. Money Bills must originate in the Lower House, and any appropriation must be recommended by the Lieutenant-Governor.

#### NOVA SCOTIA.

The Upper House consists of twenty-one members nominated for life by the Lieutenant-Governor, who acts in practice and in law on the advice of his Ministers. The Lower House of thirty-eight members is elected by adult suffrage for five years.

The relations between the two Houses are similar to those in Quebec. In financial matters the Lower House is practically unchecked; in other matters the Upper House interferes comparatively little, and as a nominee body is deficient in moral strength. Money Bills must originate in the Lower House, and any appropriation must be recommended by the Lieutenant-Governor.

#### NEWFOUNDLAND.

##### Composition.

The Upper House in Newfoundland consists of members nominated provisionally by the Governor and approved by His Majesty, or appointed by His Majesty on the recommendation of the Governor. The Governor cannot nominate members so as to make the number of members exceed fifteen. Members hold office for life. Nominations by the Governor are in practice made on the advice of Ministers, and appointments by the Crown are also in practice so made. The number of members at present is twenty-one. The Lower House consists of thirty-six members, and the duration of Parliament is limited to four years.

##### Powers.

The Upper House in Newfoundland does not in practice amend or reject Taxation or Appropriation Bills, which must originate in the Lower House. It is recognised that the Upper House is not entitled to override the Lower House in any matter of importance, and that in the long run the Government would normally obtain from the Crown the creation of extra members to override opposition. This was clearly seen in 1909 when the Upper House accepted without demur the legislation proposed by the Government of Sir E. Morris, although the Upper House consisted in the main of supporters of the ex-Premier, Sir R. Bond. As a matter of fact the House was increased in 1904 to secure that Sir Robert Bond should have a majority to pass the legislation to give effect to the Convention with France as regards the fisheries, and it was also increased in 1910 to secure that Sir Edward Morris should have a majority for legislation which might have Imperial interest, as the result of the Arbitration Treaty with the United States of America regarding the Newfoundland and Canadian fisheries.

Money Bills must originate in the Lower House, and any appropriation must be recommended by the Governor.

#### COMMONWEALTH OF AUSTRALIA.

##### Composition.

The Senate of the Commonwealth consists of thirty-six members, elected six for each State. Members must have been three years resident, and either natural-born or naturalised for five years. The electors must possess the same qualifications as electors for the House of Representatives, so that both Houses are elected on the same adult franchise but in different electoral divisions, the House of Representatives being elected in electoral divisions marked out in each State according to the number of members to represent the State, one member being elected in each division, while the State polls as one constituency for the six State members of the Senate. The Lower House consists of seventy-five members, and the duration of Parliament is limited to three years.

##### Powers.

The two Houses of the Commonwealth Parliament have by law the same powers, except that the Senate cannot originate Appropriation or Taxation Bills, and it cannot amend Taxation Bills or Bills appropriating revenue or moneys for the ordinary annual services of the Government. Any other Bills it may amend, but not so as to increase any proposed charge or burden on the people. It is expressly provided that Appropriation Bills for the ordinary annual services of the Government shall deal



only with the imposition of taxation, and any provision dealing with any other matter shall be of no effect. Moreover, laws imposing taxation, except laws of customs or excise, shall deal with one subject only, and laws dealing with customs and excise shall be confined to customs or excise respectively. But though the Senate may not amend certain Bills, it may at any stage return to the House of Representatives any Bill which it may not amend, requesting by message the omission or amendment of any items or provisions therein, and the House of Representatives may, if they wish, make any such omissions or amendments, with or without modifications.

Provision is made for cases in which the House of Representatives passes a law and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree. If, after an interval of three months, the House of Representatives in the same or the next Session again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. Such a dissolution shall not take place within six months before the date of the expiry of the House of Representatives by efflux of time. If, after the dissolution, the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives. The members present at the joint sitting may deliberate, and must vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and the House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the King's assent.

Special provision is made for a case of disagreement on a proposed law for the amendment of the Constitution. Normally such a law requires to be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives, who at present are the same as the electors for the Senate. If either House, however, passes any such Bill by an absolute majority, and the other House rejects or fails to pass it, or passes it with any amendments to which the first House will not agree, and if, after an interval of three months in the same or the next session, the first House again passes the proposed law by an absolute

majority, with or without any amendment which has been made or agreed to by the other House, and the other House rejects or fails to pass it, or passes it with any amendment to which the first House will not agree, the Governor-General may submit the proposed law, as last proposed by the first House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives.

If in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the King's assent.

It would seem that the framers of the Constitution of the Commonwealth intended that the Senate should be a stronghold of State influences, and this was intended to be secured by the equal representation of all the States. As a matter of fact, however, the Senate has not fulfilled this expectation, but has throughout been far more steadily, on the whole, Commonwealth in sentiment than the House of Representatives. This is due, apparently, to the mode of election, which enables the Labour party, with its excellent organisation, to secure a much greater proportion of representation in the Senate than in the House of Representatives, so that the Labour members form nearly half of the Senate, while they are in a decisive minority of about one-third in the Lower House.

As regards the powers with reference to money Bills, the Senate has asserted its full rights with regard to those matters, and curiously enough the provision that it should not amend certain Bills has so been used as in effect to confer upon it greater powers with regard to these very Bills than it has with regard to other Bills. For it has been held that the right to suggest amendments is not subject to the rule, which applies to Bills which the Senate can amend, that they must not increase the burdens on the people; as they are mere suggestions, it is held that they may suggest increases. Moreover, it has never yet been decided how often the Senate can make suggestions; in practice, after sending back a Bill with two sets of suggestions, the Senate and the House of Representatives have compromised, so that no third set has been sent back, but it is impossible to say that a third set of suggestions could not have been made if the Senate had thought fit to insist upon doing so. Thus, in the case of the Customs Tariff of Australia, the Senate took a most active part in settling the terms of the tariff, insisting upon, and securing, increases in some items and decreases in others. This position of the Senate corresponds naturally with the fact that, in effect, it is a rather more democratic House, as at present constituted, than the House of Representatives.

In general legislation the Senate has and exercises equal powers with the other House.

#### NEW SOUTH WALES.

##### Composition.

The Upper House of New South Wales consists of members whose maximum is not limited, but whose minimum is twenty-one, nominated for life by the Governor, in practice on the advice of Ministers. The number nowadays is between sixty and seventy. The Lower House consists of ninety members, and the duration of Parliament is limited to three years.



The Upper House of New South Wales is admittedly a much weaker House than the Lower House, and it does not, in practice, amend or reject Taxation or Appropriation Bills, which must originate in the Lower House. In general legislation it acts more freely, but its power is limited by the fact that it is recognised that the Government can secure the addition of members for the Government to "swamp" opposition. It is true that for many years the practice was to endeavour to maintain at a fixed minimum, which was altered from time to time with the increase of the importance of New South Wales, the number of members of the Upper House, so as to preserve its legislative independence, but it may fairly be said that since 1888, at any rate, this theory has been completely abandoned, both in practice and in theory. Criticisms have been passed from time to time on the practice of swamping the Upper House, but the legitimacy of the practice must be regarded as fully established.

#### QUEENSLAND.

The Upper House of Queensland consists of members, unlimited in number, nominated for life by the Governor. The number is usually about 45. The Lower House consists of seventy-two members, and the duration of Parliament is limited to three years.

The question of the relations of the two Houses with regard to money Bills was raised formally, after various local discussions, in 1886, when by agreement between the two Houses the Privy Council were asked to adjudicate upon the issue whether the Constitution Act of 1867 conferred on the Legislative Council powers co-ordinate with those of the Legislative Assembly with regard to the amendment of all Bills, including money Bills, and whether the claims of the Legislative Assembly, as set forth in a Message of the 12th November, 1885, were well founded. In that Message the Legislative Assembly discussed amendments made by the Council to an Appropriation Bill. They argued that in a Colony where there were two Houses, the Upper House had only the powers with regard to money Bills of the House of Lords. They contended that a nominee Council had accordingly no right to amend a money Bill, though they admitted that the Council had the right to reject a Bill. The Privy Council advised that the Legislative Council had not co-ordinate powers with regard to the amendment of all Bills, and that the claims of the Legislative Assembly were well founded, thus establishing for Queensland—and, it may be added, at any rate for all those Colonies in which the Upper House is nominee (that is, Canada, Quebec, Nova Scotia, New South Wales, New Zealand, Transvaal, Orange River Colony, and Natal)—that the Upper House cannot amend money Bills any more than the House of Lords can amend money Bills.

In general legislation the Upper House of Queensland has preserved greater independence. In 1907 a dispute between the two Houses came to a head, and it was sought by Mr. Kidston, then Prime Minister, to obtain from the Governor the promise to create extra members of the Upper House in order to overcome resistance offered to his proposals. The Governor enquired the view of the Colonial Office on the subject, and he was

advised in effect that it was not a matter in which the position of the Upper House should be protected against the Government unless it was clear that on an appeal to the constituencies the action of the Premier would not be upheld. The Governor, however, declined to accept the advice of the Premier, and eventually the Premier resigned. Mr. Philp, who then took office, was compelled to advise the Governor to dissolve the Lower House, and on an appeal to the country Mr. Philp was decisively defeated, and Mr. Kidston returned to office. He then secured the passing of an Act which provides that, in the case of disagreement between the two Houses, a referendum shall take place.

The circumstances in which this Bill was passed were of some interest. As the decision of the constituencies was quite clearly against Mr. Philp, he at once resigned, and Mr. Kidston had no difficulty in forming a Government. He proceeded to carry out a legislative programme which included the Bills which had been rejected by the Legislative Council in the former Session. At the same time, he proceeded with and rapidly carried into law a Bill which repealed a clause of the Constitution Act, 1867, which required that any change in the Upper House should be made by a two-thirds' majority of votes. He then proceeded to introduce a Bill, which was accepted by a very narrow majority in the Legislative Council, and which provided for the submission of certain Bills to the electors in the case of a deadlock between the two Houses. Under the Act, whenever a Bill has been twice rejected by the Legislative Council, the Governor in Council may, after the close of the Session in which the Bill was rejected for the second time, direct that the Bill shall be submitted by referendum to the electors, and thereupon the electors are entitled to vote, and on a majority of the votes recorded being in favour of the Bill, the Bill shall be presented to the Governor for the Royal assent. A Bill is deemed to be rejected a first time when it has been passed by the Legislative Assembly not less than one month before the close of a Session of Parliament and then transmitted to the Legislative Council which before the close of the Session has either rejected or failed to pass the Bill, or passed the Bill with any amendment in which the Legislative Assembly does not concur. A Bill is deemed to have been rejected a second time when the Legislative Assembly in the next Session of Parliament has, after an interval of not less than three months from the first rejection of the Bill, again passed the Bill, or a Bill substantially the same, and transmitted it to the Legislative Council for its concurrence not less than one week before the close of the Session, and the Legislative Council before the close of the Session has either rejected or failed to pass the Bill, or passed the Bill with any amendment in which the Legislative Assembly does not concur, and by reason of which the Bill has again been lost.

At this Session the Lower House also passed an expression of regret at the action of the Governor in having granted a dissolution to Mr. Philp, and it was not until the very end of the Session that they consented to pass legislation ratifying the expenditure which had taken place after the resignation of Mr. Kidston and before his return to office.

The tactics adopted by Mr. Kidston in this matter were no doubt due to the peculiar position in which he



found himself from the point of view of party politics. Originally a member of the Labour party, he had become alienated from that organisation, and had become the leader, on the retirement of Sir A. Morgan, of the Liberal party. The legislation which he found impossible to carry through the Upper House was supported by the Labour party, and at the elections following his resignation the Labour party in effect supported Mr. Kidston, and they joined with him, though they would have preferred the abolition of the Upper House, in carrying the measure for a referendum. But the Labour party, in accordance with its fixed rule of refusing permanent alliances, was not prepared to give Mr. Kidston a steady support unless he accepted wholesale their policy, in which event he could not have relied upon the support of many of his own party. Therefore, before the end of the Session, Mr. Kidston had in effect arranged a coalition with Mr. Philp's followers, which was carried into full effect shortly after the close of the Session. The necessity of arranging some such coalition was no doubt before Mr. Kidston's mind in adopting the referendum as a means of settling disputes between the two Houses.

#### VICTORIA.

The Legislative Council of Victoria consists of thirty-four members, representing seventeen provinces, who must be of the age of 30 years or upwards, and possessed of freehold property of the annual value of at least 50*l.* for one year previous to the election. They are elected for six years on a restricted franchise, which is exercised by persons owning a freehold of the annual value of 10*l.* or a leasehold of property rated at 15*l.*, or possessing certain qualifications such as being a graduate of a British university, a matriculated student of Melbourne University, a qualified legal or medical practitioner, a minister of religion, a certificated schoolmaster, or a naval or military officer. In the case of the House of Representatives there is, for all practical purposes, adult suffrage, and the duration of the House of Representatives is limited to three years.

As both Houses are elective, in ordinary legislation they have equal powers. On the other hand, the Constitution Act of 1855 forbade the Upper House to amend money Bills which were to originate in the Lower House. In 1865-1866 the Assembly decided to introduce a new Customs Tariff, and tacked it on to the Appropriation Act, in order to overcome the resistance of the majority of the Council to the policy of protection embodied in the tariff. The Council declined to pass the Bill, and the Governor illegally proceeded to permit his Ministers to borrow money without a law, and to pay official salaries without an Appropriation Act. For these breaches of duty the Governor was recalled, and the two Houses reconciled their differences by a policy of mutual concession. In 1877 a much more serious dispute occurred, owing to the opposition of the Council to the practice of paying members and their refusal to pass an Appropriation Bill including an item of this kind. The Governor took certain steps to assist his Ministers to obtain money without the sanction of Parliament, for which he received a mild censure from

the Secretary of State. The dispute continued until 1879, both Houses, in the opinion of the Secretary of State, going beyond their just rights, and the question at issue was at last settled practically in favour of the Council. The position, however, still remained anomalous, and in 1903, after vehement political disputes, the Constitution was amended. The Council was empowered once at each of the following stages of a Bill, viz., the consideration of the Bill in Committee, the consideration of the Report of the Committee, and the third reading of the Bill, to return the Bill to the Assembly, suggesting by message the omission or amendment of any items or provisions therein, and the Assembly may make any such omissions or amendment with or without modifications, but the Council may not suggest any omission or amendment the effect of which would be to increase any proposed charge or burden on the people. It will be seen that this provision is borrowed, with modifications, from the Commonwealth Constitution Act. The Council has only the right of returning a Bill once at each of the three stages in question, and it cannot, as does the Commonwealth Senate, make repeated suggestions. On the other hand, it should be said that the Upper House use their powers freely; for example, in the session of 1909 they amended a Land Tax Bill so as to turn it into a Bill for valuation only, with the result that the House of Assembly declined to accept their suggestions, and the Legislative Council would not proceed with the Bill further. On the other hand, there has been no rejection of ordinary Appropriation or Taxation Bills.

While the Upper House have and really exercise co-ordinate powers with regard to all other but money Bills, provision exists in the case of a disagreement between the Houses with regard to any Bill. If the Assembly passes a Bill and the Council rejects or fails to pass it, or passes it with amendments to which the Assembly will not agree, and not later than six months before the date of the expiry of the Assembly by efflux of time, the Assembly is dissolved by the Governor by a Proclamation, declaring the dissolution to be granted in consequence of the disagreement between the two Houses as to such Bill, and if the Assembly again passes the Bill, with or without any amendments which have been made, suggested, or agreed to by the Council, and the Council rejects or fails to pass it, or passes it with amendments to which the Assembly will not agree, the Governor at any time, not being less than nine months or more than twelve months after the said dissolution, may dissolve the Council and the Assembly simultaneously.

It will be seen that this Act only renders possible an appeal to the country which will affect both Houses simultaneously.

#### SOUTH AUSTRALIA.

##### Composition.

In South Australia the Legislative Council consists of eighteen members, who must be of the age of 20 or upwards, and who are elected for four electoral districts, of which the first returns six members and the others four members each. The members are elected for six years by electors who are either owners of a freehold of the clear value of 50*l.*, owners of a leasehold



of the clear annual value of 17*l.*, with at least three years to run, or containing a right of purchase, occupiers of a dwelling-house of the clear annual value of 25*l.*, or registered proprietors of a Crown lease on which there are improvements to the value of at least 50*l.* In the case of the Lower House of forty-two members, there is adult suffrage, and the duration of Parliament is limited to three years.

As both Houses are elective, the Legislative Council possesses, with regard to general legislation, equal power with the Lower House. With regard to money Bills, which must originate in the Lower House, matters are regulated by an agreement between the two Houses, which dates back to 1857, shortly after the inauguration of responsible government. The two Houses could not then agree, and the Legislative Council on the 25th August, 1857, agreed to certain resolutions, the third, fourth, and fifth of which provided that all Bills the object of which shall be to raise money, whether by way of loan or otherwise, or to warrant the expenditure of any portion of the same, shall be held to be money Bills; that it shall be competent for the Council to suggest any alterations in any such Bills except that portion of the Appropriation Bill which provides for the ordinary annual expenses of the Government, and in case of such suggestions not being agreed to by the House of Assembly, such Bills might be returned by the House of Assembly to the Council for reconsideration, in which case the Bill should either be assented to or rejected by the Council as originally passed by the House of Assembly; that the Council, while claiming the full right to deal with the monetary affairs of the provinces, did not consider it desirable to enforce its right to deal with the details of the ordinary annual expenses of the Government; that on the Appropriation Bill in the usual form being submitted to the Council, the Council should, if any clause therein was deemed objectionable, demand a conference with the House of Assembly to consider the objections of the Council and receive information. On the 19th November, 1857, the Council received a message from the House of Assembly, in which they stated that they did not accept the views of the powers of the Upper House taken by the Legislative Council, that in their opinion the position of the two Houses was analogous to that of the two Houses of the Imperial Parliament, but that, in order to facilitate the conduct of public business, the House of Assembly, while asserting its sole right to direct, limit, and appoint in all money Bills the ends, purposes, considerations, conditions, limitations, and qualifications of the tax or appropriation by such Bill imposed, altered, repealed, or directed, free from all change or alteration on the part of the other House, would nevertheless, for the present, adopt the third, fourth, and fifth resolutions agreed to by the Legislative Council on the 25th August, 1857.

As a matter of fact the Council has not contrived to maintain full control over the finances of the State. In matters of imposing new taxation, indeed, it appears that the Council is given a full opportunity of rejecting or suggesting amendments, but in matters of appropriation it is matter for complaint by the Council that for some years past the Lower House have, by means of loan estimates and otherwise, deprived the Council of its legitimate control over the expenditure of the State. This, as a

matter of fact, does indeed appear to be the case, and the Council is unable to assert its privileges by resisting or rejecting an Appropriation Act on the ground that it includes appropriations which ought to be made the subject of separate legislation in accordance with the spirit of the Agreement of 1857, because the expenditures provided for by the Lower House are well known to be popular in the country, so that the Legislative Councillors would endanger their seats, and possibly the existence of the Council, if they insisted upon their theoretical rights.

Provision exists under an Act of 1908 for the settlement of deadlocks between the two Houses. Whenever a Bill has been passed by the House of Assembly during one Session, and the same Bill, or a similar Bill with substantially the same objects and having the same title, has been passed by the House of Assembly during the next ensuing Parliament, a general election of the House of Assembly having taken place between such two Parliaments and the second and third readings of the Bill having been passed in the second instance by an absolute majority of the whole number of members of the House of Assembly, and both Bills have been rejected or failed to become law in consequence of any amendment made therein by the Legislative Council, the Governor may, within six months after the last rejection or failure to pass, dissolve the Legislative Council and House of Assembly, and new members shall be elected to fill the vacancies in both Houses, or the Governor may instead issue writs for the election of three additional members for the central district and two additional members for each of the other districts of the Legislative Council. It will be seen that the pressure thus applied upon the Council is not very effective, as the number of conditions precedent to the carrying out of penal dissolution or addition of members is very great. As a matter of fact no case has yet arisen in which the Act has been put into force, nor was the preceding Act of 1901, which was similar in character but still more restricted in operation, ever put into force. A threat in 1906-7, however, to bring the Act into operation was found sufficient to induce the Council to make certain concessions with regard to the franchise of Council electors.

#### TASMANIA.

##### Composition.

The Upper House of Tasmania consists of eighteen members, who must be 30 years old, and are elected for six years from fifteen electoral districts. The qualifications of an elector are either the possession of freehold to the annual value of 10*l.*, of leasehold of 30*l.* annual value, of being graduates of any British university, qualified legal or medical practitioners, ministers of religion, or army or navy officers. The franchise for the Lower House of thirty-five members is adult suffrage, and the operation of Parliament is limited to three years.

##### Powers.

The two Houses, being elective, have equal powers in ordinary legislation, and in theory, at any rate, with regard to money Bills, save that the latter must originate in the Lower House. The Upper House of Tasmania is certainly the most powerful Upper House among the Australian States, and it has asserted repeatedly its



control over ordinary legislation, and it has not hesitated to reject from time to time Bills proposing new taxation. It does not normally amend the ordinary Appropriation Bill, or taxation Bills, but it would no doubt do so if any attempt were made to combine novel projects of taxation or expenditure with the ordinary Acts imposing taxation and sanctioning expenditure. In any case it would not amend any Bill so as to increase the burden imposed on the people. Tasmania, it should be mentioned, is for many reasons by far the most conservative State in Australia, and the position of its Upper House is really unique.

#### WESTERN AUSTRALIA.

The Legislative Council of Western Australia consists of thirty members, who must be 30 years of age, elected for ten districts, each returning three members, who hold their seats for six years. The electors must either own a freehold estate of the value of 100*l.*, occupy a house or own leasehold property rated at 25*l.*, hold Crown leases or licences to the value of not less than 10*l.* a-year, or be on the electoral list of a municipality or road board district in respect of property of the annual value of 25*l.* The suffrage for the Lower House of fifty members is adult suffrage, and the duration of Parliament is limited to three years.

In general legislation the two Houses, being elective, have equal powers, and the Upper House, as a matter of fact, exercises those powers quite freely. After some discussion as to the right of amending money Bills, which must originate in the Lower House, it was agreed by Acts of 1891 and 1899 that the Legislative Council after it became elective, it having been at first nominee, may freely return any money Bills sent up to it, requesting alterations, but it has been ruled that the Council cannot insist on a request rejected by the Lower House. The right to reject a money Bill remains unimpaired.

It should be mentioned that in all the Australian States in New Zealand and in the Commonwealth women are admitted to the suffrage on the same terms as men.

#### NEW ZEALAND.

The Upper House of the Dominion of New Zealand consists of persons nominated by the Governor, who now hold seats for seven years only. Formerly seats were held for life, but this was altered in 1891 with regard to all future appointments, which it was laid down would be for seven years only. The number of members is usually between forty and fifty. In the Lower House there are eighty members, and the duration of Parliament is three years. There is adult suffrage.

Disputes between the two Houses as regards the respective powers arose at an early date, and in 1872 the Law Officers of the Crown in England were consulted on the question of the right of the Legislative Council to amend a money Bill. The Constitution Act, as usual, makes no provision beyond laying it down that money Bills must be recommended by the Governor to the House of Representatives. The Law Officers reported that the Council were not constitutionally justified in amending a money Bill, and on this principle the

Legislative Council of New Zealand has consistently acted since the date of the opinion of the Law Officers. It may be mentioned that the opinion of the Law Officers was cited in the submission to the Privy Council by the Legislative Assembly of Queensland of 1885-6, and was apparently accepted by the Judicial Committee as a correct statement of the law.

In general legislation the Upper House maintained equal authority with the Lower House until 1892. Mr. Ballance, who succeeded Sir H. Atkinson as Premier in 1891, found a difficulty in conducting business owing to the fact that the Upper House, who represented Conservative views, were not prepared to adopt the Radical legislation which the Government proposed to bring before it. With a view to securing adequate debating power in the Upper House he asked the Governor to appoint twelve extra members, whose names he proposed. The Governor was not willing to accept his recommendation to the full extent, being only willing to appoint nine members, and by agreement the matter was referred home for the decision of the Secretary of State. This decision was given on broad constitutional grounds in favour of the contention of the Premier, and since that date it has been recognised in practice that the Upper House of New Zealand is not entitled to oppose the will of the Lower House, and in point of fact the Radical programme became law. Moreover, the law of 1891, under which appointments are only for seven years, affords the Government an automatic means of changing gradually the political complexion of the Council, and the Council is kept more in sympathy with the Lower House than can ever normally be the condition under appointments for life.

#### CAPE OF GOOD HOPE.

##### Composition.

The Upper House of the Cape of Good Hope consists of twenty-six members, presided over, *ex officio*, by the Chief Justice. The members are elected: four each for the Western Province, the South-Eastern Province, and the Eastern Province, and three each for the North-Western Province, the South-Western Province, the Midland Province, and the North-Eastern Province, one for Griqualand West, and one for British Bechuanaland. A member must possess immovable property to the value of 2,000*l.*, or movable property to the value of 4,000*l.* The franchise for the Legislative Council is the same as that for the Lower House of 107 members, but for the purpose of the House of Assembly elections the Colony is divided into forty-six electoral divisions, and in voting for the Upper House "plumping" is allowed. Members of the Council are appointed for seven years, and the duration of Parliament is five years. Electors are qualified by possession of property worth 75*l.* or the receipt of salary or wages of not less than 50*l.* a-year, but no one can be newly registered as a voter unless he can sign his name and write his address and occupation.

##### Powers.

The relations between the two Houses are those of perfect equality, subject only to the rule that Appropriation Bills must originate in the Lower House. The Constitution gives express power to the Upper House to amend money Bills, and the power is freely used, but by constitutional practice only to reduce expen-



ditute, not to increase it. Moreover, the Upper House has been quite prepared to throw out a general Appropriation Bill in order to bring pressure on the Lower House, as was seen in 1907, when the Legislative Council declined to pass the Appropriation Bill until the Premier consented to a dissolution of Parliament in return for the passing of the Bill in question.

#### NATAL.

The Legislative Council of Natal consists of thirteen members nominated by the Governor in Council. The members are summoned according to the districts of the Colony, five from within the counties of Durban, Victoria, Alexandra, and Alfred, three from within the counties of Pietermaritzburg and Umvoti, three from within the counties of Weenen and Klip River, one from the province of Zululand, and one from the new territory; but not more than two members may be chosen from within any one county. Each member holds his seat for ten years from the date of his summons, but five of the members first summoned vacate their seats at the end of five years, so that about one-third of the Council is changed from time to time. No person may be summoned as a member of the Legislative Council unless he is a registered proprietor of immovable property within the Colony worth 500*l.* in net value, is 30 years of age, and has been ten years resident in Natal. The Lower House of forty-three members is elected on a franchise which extends to all persons possessing property to the value of 50*l.*, or renting property of the annual value of 10*l.*, or possessing an income of *£*1 a month if resident for three years in the Colony, and the duration of Parliament is limited to four years.

In general legislation the Council is on an equality with the Lower House, but the Constitution expressly forbids it to amend money Bills, which must originate in the Lower House. The position of the Council in general legislation is much stronger than is the case with the ordinary nominated Upper Chamber, because the total number of members is restricted to thirteen, and there is no means by which the Council can be "swamped." The Council has freely exercised the power to reject taxation proposals when presented in separate Bills.

#### TRANSVAAL.

The Legislative Council of the Transvaal consists of fifteen members nominated by the Governor for a period of five years. Members must be of the age of 30 years or upwards, and have resided in the Colony for three years. The Letters Patent provide that at any time after four years from the date of the first meeting of the Council the Legislature can pass a law providing for the election of members of the Council. If an elective Legislative Council were established, the duration of both Houses would be for five years. The Lower House of sixty-nine members is elected on adult white franchise, and the duration of Parliament is limited to five years.

The Legislative Council and the Legislative Assembly were given equal powers in legislation, except only that the Legislative Council could not originate money Bills and was not permitted to amend any

money Bill passed by the Legislative Assembly. In the brief period in which this Constitution has been in operation, the only difficulty which has arisen has been the dispute between the two Houses as to what are money Bills, and a reference was made to the Law Officers on the subject, which has been decided on the exact wording of the Letters Patent to include any Bill by which a charge is imposed upon the public revenue.

Provision is also made in the Constitution for the case of differences of opinion between the two Houses. If the Legislative Assembly passes any Bill and the Legislative Council rejects or fails to pass it, or passes it with amendments to which the Legislative Assembly will not agree, and if the Legislative Assembly in the next Session again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Legislative Council, and the Legislative Council rejects or fails to pass it, or passes it with amendments to which the Legislative Assembly will not agree, the Governor may, during that Session, convene a joint sitting of the members of the Legislative Council and Legislative Assembly, or may dissolve the Legislative Assembly, and may simultaneously dissolve both the Legislative Council and Legislative Assembly if the Legislative Council shall then be an elected Council. But no such dissolution shall take place within six months before the date of the expiry of the Assembly by efflux of time. If, after the dissolution, the Legislative Assembly again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Legislative Council, and the Legislative Council rejects or fails to pass it, or passes it with amendments to which the Legislative Assembly will not agree, the Governor may convene a joint meeting of the members of the Legislative Council and of the Legislative Assembly, at which the Speaker of the Legislative Assembly shall preside. The members present at any joint sitting convened under either of the conditions mentioned may deliberate and shall vote together upon the Bill as last proposed by the Legislative Assembly, and upon amendments, if any, which have been made therein by the one house of the Legislature and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Legislative Council and Legislative Assembly shall be taken to have been carried, and if the proposed law with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Legislative Council and the Legislative Assembly, it shall be taken to have been duly passed by the two Houses.

#### ORANGE RIVER COLONY.

##### Composition.

The Legislative Council consists of eleven members nominated by the Governor. Of these, three vacate their seats at the expiration of the third year of office, four at the end of the fifth year, and four at the end of the seventh year, when their places fall to be filled by persons appointed by the Governor in Council, to hold office for five years from the date of appointment. But after four years from the date of the first meeting of the Council, the Legislature is entitled to pass a law pro-



viding for the election of members of the Legislative Council. Members of the Council must be 30 years of age and have resided in the Colony for three years. The Lower House consists of thirty-eight members elected on an adult white franchise, and the duration of Parliament is limited to five years.

The powers of the two Houses, provision as to the non-amendment of money Bills, and as to the case of disagreement between the two Houses, are the same as in the Transvaal.

#### UNION OF SOUTH AFRICA.

The Senate of the Parliament of South Africa is to be composed in the first instance of eight nominated members, selected by the Governor in Council, of whom four shall be selected on the ground of their thorough acquaintance, by reason of official experience or otherwise, with the reasonable wants and wishes of the coloured population of South Africa. In addition, each province is to elect eight members. These members will be chosen by the two Houses of the Colonial Parliaments, sitting together, on the principle of proportional representation with a single transferable vote, at a date before the day appointed for the coming into effect of the Union. In both cases the Senators will hold office for ten years, and casual vacancies will be filled up by the Governor-General in Council in the case of nominated members, and in other cases by the Provincial Councils on the principle of proportional representation with a single transferable vote, but those appointed by the Councils will only hold office until the expiration of the first ten years. Parliament may provide as to the manner in which, after the expiration of ten years, the Senators shall be elected, but if no special provision is made it will be carried out by the Provincial Councils sitting together with the members of the House of Assembly for the provinces. A Senator must be 30 years of age, have resided for five years in the Union, be a British subject of European descent, and, if an elected member, must be possessed of immovable property within the Union of a clear value of 500*l.* over and above any special mortgages thereon. The Senate combines in a curious manner the principles of nomination and election, which has no parallel at present in the Upper Houses of the other Dominions and Colonies. The only precedent is that of the Legislative Council of Canada after 1856 until Confederation, which was found to work badly as far as the elective members were concerned. The nomination of members for ten years will secure the first Government of the Union a considerable control over the constitution of the Senate. The Lower House consists of 121 members elected on a franchise which, for the present, is that of voters for the election of members of the Lower House in each province, and the duration of Parliament is limited to five years.

The two Houses have in general legislation equal powers, but the Upper House has no power to originate money Bills, and may not amend any Bills so far as they impose taxation or appropriate revenue or moneys for the service of the State, nor may the Senate amend any Bills so as to increase any proposed charges or

burden on the people. It is also provided that no Bill appropriating revenues or moneys for the annual services of the Government shall deal with any other matter, thus preventing tacking. This provision is the same as in the Commonwealth Constitution, but, on the other hand, there is no provision in the Bill, as in that Constitution, which forbids the mixing up of other matters in taxing Bills and the restriction of taxation Bills to one subject. Nor is power given to the Upper House, as in the case of the Commonwealth, to suggest amendments to money Bills.

The provision made for deadlocks is of considerable simplicity, especially in the case of Bills for the appropriation of revenue or moneys for the public services. If the Assembly passes a Bill and the Senate does not agree in one Session, and the Lower House passes the Bill again in the next Session, and it is rejected, the Governor-General may convene a joint sitting of the Houses, at which the Bill, with any amendments made by either House and disagreed to by the other House, shall be deliberated upon and voted for. Any amendments which the majority of the members sitting together approve, and the Bill as amended if approved, shall be taken to be passed, and the Bill shall then be presented to the Governor-General for the Royal assent. In the case of Appropriation Bills, the joint sitting may be commenced in the same Session in which the Bill is rejected or fails to pass.

These provisions secure that, within the lifetime of the same Parliament, any disputed Bill shall be submitted to a joint vote of the two Houses if the Government, with the support of the Lower House so desires, while an Appropriation Bill can be so submitted in the same Session.

In the Union of South Africa, as also in the Commonwealth and in Victoria, to avoid disputes over unimportant Bills, it is laid down that a Bill is not to be taken to appropriate money or to impose taxation merely because it imposes fines or other pecuniary penalties or provides for the appropriation of such fines.

To sum up :

IN THE CASE OF NOMINATED UPPER CHAMBERS,

it may be said :—

1. In general legislation the Chamber is theoretically equal in power with the Lower Chamber, but in practice is restricted, though in different degrees, in the various Colonies by the consideration that a nominee body does not possess the same moral authority as a representative body.

2. With regard to money Bills, no nominee Upper House has a right to originate or to amend such Bills, nor are such Bills amended in practice. All the Houses retain the theoretical right to reject money Bills; this as a matter of practice is not done in the case of general Appropriation Bills.

IN THE CASE OF ELECTIVE HOUSES.

1. With regard to general legislation the powers of the two Houses must be considered as equal. As a



matter of fact, as the Government of the day is determined by the majority in the Lower House, the Upper House is less effective in legislation, inasmuch as it has to be content as a rule to criticise the legislation which is passed by the Lower House.

2. With regard to money Bills, the Upper House has nearly coequal powers with the Lower House. In every case, however, a money Bill requires by law to be introduced in the Lower House, and the right of the Upper House to amend is usually limited or restricted by custom or by positive legislation, though in the case of Tasmania the Upper House has never acquiesced in the existence of such limitations. But no Upper House amends a Bill so as to increase the burden on the people. The right of the Upper House to reject money Bills is undoubted, has been exercised, and would no doubt, in case of emergency, be exercised even with regard to the case of an Appropriation Bill.

A. B. K.

*February 22, 1910.*

20 886/4/3

23

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Dominions  
No. 23.  
Confidential.

CORRESPONDENCE

WITH THE

SELF-GOVERNING DOMINIONS

RELATING TO THE

LAW OF COPYRIGHT.

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|            |  |                         | <b>1907.</b>                                |   |       |
| 1          | To the Governor-General and Governors. | Miscellaneous.          | January 11                                  | Transmits, for Ministers' consideration, copies of clauses drafted in substitution for those in the Bills of 1900 to which exception was taken by certain self-governing colonies and states that it is not at present proposed to depart in other respects from the general lines of the Bills of 1900.                                  | 1     |
| 2          | The Governor ...                       | New Zealand, Telegram.  | (Rec. April 11)                             | Reports that Ministers raise no objection to the action proposed.   | 3     |
| 3          | Ditto ...                              | Newfoundland, 57.       | April 8<br>(Rec. April 27.)                 | Forwards remarks by the Attorney-General.   | 3     |
| 4          | Ditto ...                              | Natal, 49.              | April 8<br>(Rec. May 4.)                    | States that before expressing opinion on the draft clauses, Ministers would be glad to have information as to the objections raised by certain colonies to corresponding clauses in the old Bills and as to their present attitude towards the proposed clauses.  | 3     |
| 5          | Ditto ...                              | Cape of Good Hope, 122. | April 25<br>(Rec. May 18.)                  | Forwards copy of a Minute from Ministers enclosing a Report by the Attorney-General stating that the clauses which it is proposed to insert satisfy the main objections of his predecessor and pointing out that there are essential differences between these clauses and the Cape Act, No. 46 of 1905.                                  | 4     |
| 6          | To the Governor ...                    | Natal, Miscellaneous.   | May 29                                      | Transmits, in reply to No. 4, copy of a Minute of the Privy Council of the Dominion of Canada, embodying the observations of the Minister within whose province the matter lies.  | 5     |
| 7          | The Governor ...                       | Natal, 156.             | September 9<br>(Rec. Oct. 5.)               | Forwards Minute by the Prime Minister in which exception is taken to the proviso to Section (2) of draft Clause A, as overriding Clause VIII. of the Royal Instructions dated July 20, 1893, together with a copy of the Attorney-General's minute referred to; Ministers decline to discuss the clauses unless the proviso is withdrawn. | 7     |
| 8          | To the Governor ...                    | Natal, 132.             | December 31                                 | Transmits copies of Nos. 2, 3, and 5  | 8     |
|            |  |                         | <b>1908.</b>                                |   |       |
| 9          | The Governor-General.                  | Australia, 328.         | December 24, 1907.<br>(Rec. Jan. 25, 1908.) | Forwards copy of a Memorandum by the Attorney-General of the Commonwealth embodying the views of the Government.  | 8     |

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|            |  |  | <b>1908.</b>                  |  |       |
| 10         | To the Governor-General and Governors. | Australia, 95.<br>New Zealand, 45.<br>Canada, 149.<br>Newfoundland, 43.<br>Cape, 49.<br>Orange River Colony, 33.<br>Transvaal, 71.<br>Natal, 88. | March 20                      | Transmits copy of a note from the German Ambassador inviting His Majesty's Government to send representatives to an International Copyright Conference at Berlin on 14th October, and related papers; awaits observations of Ministers on the suggested amendments to existing convention, and states nature of instructions to be given to British delegates. | 9     |
| 11         | The Governor ...                       | Natal, 68.   | April 30<br>(Rec. May 23.)    | Reports that the procedure suggested in No. 10 will be acceptable to his Ministers.  | 12    |
| 12         | Ditto ...                              | Cape of Good Hope, 89.   | May 3<br>(Rec. May 23.)       | Transmits copy of a Minute from Ministers stating that procedure proposed in No. 10 is acceptable.   | 12    |
| 13         | Ditto ...                              | Transvaal, 140.  | May 11<br>(Rec. May 30.)      | Ditto ditto ...  | 13    |
| 14         | Ditto ...                              | Orange River Colony, 70.   | May 25<br>(Rec. June 13.)     | States, in reply to No. 10, that the question as to the position to be taken up by the British delegates to the Berlin Conference is receiving attention and that a further communication will be made.  | 13    |
| 15         | The Governor-General.                  | Australia, 188.  | July 7<br>(Rec. Aug. 10.)     | Forwards letter from Prime Minister accepting the procedure proposed by the Imperial Government in No. 10, and submitting observations.  | 14    |
| 16         | To the Governor-General and Governors. | Canada, 542.<br>Australia, 306.<br>New Zealand, 149.<br>Newfoundland, 132.<br>Cape of Good Hope, 185.<br>Natal, 167.                             | September 2 and 3.            | States that the replies received from the various self-governing Dominions have caused His Majesty's Government to abandon the proposed legislation, but enquires whether Ministers would send a representative to a subsidiary conference to be held, say, at Ottawa to discuss amendments on certain specific points of the existing law.                    | 15    |
| 17         | To the Governors ...                   | Transvaal, 270.<br>Orange River Colony, 108.   | September 3                   | Ditto ...  | 16    |
| 18         | To the Governor-General and Governors. | Telegram   | September 14                  | Asks that Ministers may not regard suggestion made as to place of meeting of Conference as final, as Conference may have to be held in London.   | 17    |
| 19         | Ditto ...                              | Confidential.  | October 23                    | Transmits copies of the instructions which have been issued to the British delegates to the International Conference of the Union for the Protection of Literary and Artistic Works, now sitting at Berlin, and of a declaration by His Majesty's Government, as to their position with regard to copyright legislation.                                       | 17    |
| 20         | The Deputy Governor.                   | Transvaal, 390.  | November 2<br>(Rec. Nov. 21.) | Reports that the subject is receiving the consideration of Ministers, who are consulting the other South African Governments.  | 20    |



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| <b>1908.</b> |   |                          |  |  |       |
| 21           | The Governor ...                        | Natal, 276.              | November 16<br>(Rec. Dec. 12.)               | Reports, in reply to No. 16, that his Government are proposing to the other South African Governments that the South African Colonies should be jointly represented at the proposed Conference by Sir R. Solomon.  | 21    |
| 22           | Ditto ...                               | Cape, 284.               | November 30<br>(Rec. Dec. 21.)               | Transmits copy of a minute from Ministers, expressing the opinion that a Conference is not desirable, of letters from the Transvaal and Natal, who conditionally approve, and of a further minute from Ministers adhering to their original opinion.   | 21    |
| 23           | Ditto ...                               | New Zealand, 57.         | November 23<br>(Rec. Dec. 31.)               | Reports, in reply to No. 16, that his Government would be prepared to send a representative to such a conference.  | 24    |
| <b>1909.</b> |   |                          |  |  |       |
| 24           | To the Governors-General and Governors. | Confidential.            | January 2                                    | Transmits text of the Copyright Convention signed at Berlin on November 13th, 1908; reminds those who have not already replied, of the Secretary of State's despatch of September 2nd and 3rd, 1908, and states that a committee is being appointed by His Majesty's Government to examine the revised convention, whose reporting it is hoped will serve as a basis for the discussion at the proposed subsidiary conference. | 25    |
| 25           | The Governor ...                        | Cape, 3.                 | January 5<br>(Rec. Jan. 25.)                 | Transmits copy of minute of the Government of the Orange River Colony, stating that if a joint representative is appointed they will consider the matter.  | 25    |
| 26           | The Governor-General.                   | Australia, 321.          | December 31<br>1908.<br>(Rec. Feb. 6, 1909.) | Transmits copy of memorandum by the Attorney-General and the Registrar of Copyrights; reports that Lord Tennyson will represent the Commonwealth at the Conference and that instructions are being issued to him.  | 26    |
| 27           | The Deputy Governor.                    | Transvaal, 19.           | January 18<br>(Rec. Feb. 6.)                 | Transmits copy of a minute from Ministers expressing the opinion that it would be better if His Majesty's Government would submit draft clauses for consideration of the Colonial Governments but that if a Conference is preferred Ministers will be prepared to consult the other South African Governments as to the appointment of a joint representative.   | 29    |
| 28           | The Governor ...                        | Orange River Colony, 15. | February 1<br>(Rec. Feb. 20.)                | Reports that if the other South African Governments decide to send a joint representative, his Ministers are prepared to take the matter into consideration.   | 30    |

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| <b>1909.</b> |   |  |                                |   |       |
| 29           | To the Governor-General.                | Canada, 353.   | May 26                         | Calls attention of Ministers to No. 16; states that the Commonwealth of Australia have appointed Lord Tennyson to be their representative at the proposed Subsidiary Conference on Copyright and that New Zealand will send a representative. | 30    |
| 30           | The Governor ...                        | Newfoundland, 54.  | June 22<br>(Rec. July 1.)      | Transmits copy of a letter from the Colonial Secretary covering a report by the Attorney-General recommending that Newfoundland be represented at the proposed conference.  | 30    |
| 31           | The Acting Governor-General.            | Canada, 320.   | June 28<br>(Rec. July 10.)     | Transmits copy of a minute of the Privy Council advising that Canada be represented at the proposed subsidiary conference.  | 31    |
| 32           | To the Governors-General and Governors. | Canada, 584.<br>Newfoundland, 144.<br>Australia, 343.<br>New Zealand, 190.<br>Cape of Good Hope, 264.<br>Natal, 188.<br>Transvaal, 303.<br>Orange River Colony, 161. | September 24                   | Suggests that it would be most convenient for the proposed subsidiary conference to meet in London early in the spring of 1910 and states that if the proposal is concurred in the exact date of meeting can be arranged by telegraph.        | 32    |
| 33           | The Governor ...                        | Newfoundland, 96.  | October 7<br>(Rec. Oct. 18.)   | States, with reference to No. 32, that his Ministers have no objection to the time suggested for the subsidiary conference, and that the name of a representative from Newfoundland will be submitted in due course.                          | 33    |
| 34           | The Agent-General for the Transvaal.    | South Africa.  | November 23                    | States that he has been appointed to watch over the interests of British South Africa at the subsidiary conference.   | 33    |
| 35           | To the Agent-General of the Transvaal.  | South Africa.  | December 8                     | Acknowledges No. 34 and observes that the Secretary of State has been duly notified of the appointment by the Governments concerned.  | 34    |
| 36           | To the Governor-General.                | Canada, 752.   | December 23                    | Transmits the report of the Committee appointed to consider the alterations required to be made in the law of the United Kingdom so as to enable His Majesty's Government to give effect to the International Copyright Convention of 1908.   | 34    |
| 37           | To the Governor-General and Governors.  | Australia, 456.<br>New Zealand, 226.<br>Newfoundland, 203.<br>Cape, 329.<br>Natal, 237.<br>Transvaal, 393.<br>Orange River Colony, 203.                              | December 24                    | Ditto ...   | 34    |
| 38           | The Governor-General.                   | Australia, 271.  | November 18<br>(Rec. Dec. 27.) | States, in reply to No. 32, that the Commonwealth Government concur as to the subsidiary conference and propose to ask Lord Tennyson to be their representative.  | 35    |



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| 1910.      |   |   |                            |  |       |
| 39         | The Governor ...                        | New Zealand, Telegram.  | (Rec. Jan. 11)             | Reports that the High Commissioner for New Zealand has been appointed to represent the Dominion at the Conference, but if he is unable to attend an officer of his Department will be appointed instead.   | 35    |
| 40         | To the Governor-General.                | Canada, Telegram.   | January 17                 | States that it is proposed that the Conference should meet in London on 11th April, and that it hoped his Government will agree to the date and send the name of their representative.   | 35    |
| 41         | To the Governors-General and Governors. | Confidential.   | February 4                 | Transmits proof copies of the minutes of evidence taken before the Law of Copyright Committee.   | 36    |
| 42         | The Governor-General.                   | Canada, 50.   | February 2 (Rec. Feb. 14.) | Forwards copy of a Privy Council Minute proposing that the Minister of Agriculture shall represent Canada at the Conference and that the meetings be postponed till the middle of May.   | 36    |
| 43         | The Governor ...                        | Newfoundland, Telegram.   | (Rec. Feb. 19)             | States that his Ministers do not desire to be represented at the proposed Conference.  | 37    |
| 44         | To the Governors-General and Governors. | Newfoundland, 36.<br>Australia, 24.<br>New Zealand, 47.<br>Cape of Good Hope, 51.<br>Natal, 58.<br>Transvaal, 52.<br>Orange River Colony, 31.<br>Canada, 179. | March 11                   | Transmits copies of the minutes of evidence taken before the Law of Copyright Committee.   | 37    |
| 45         | The Governor-General.                   | Australia, 46.  | February 4 (Rec. Mar. 14.) | Transmits copy of a Memorandum prepared by the Commonwealth Attorney-General respecting Imperial copyright, which has been forwarded to Lord Tennyson, who has been asked to represent the Commonwealth Government at the proposed Conference.   | 37    |
| 46         | To the Governors-General and Governors. | Telegram.   | March 22 and 23.           | States that since the Berlin Convention the position has considerably altered, and that the Board of Trade assume all parties to the Conference will agree that the discussion cannot now usefully be confined within the narrow limits contemplated in No. 16, and propose that the subjects of discussion should comprise the two heads specified. | 40    |
| 47         | The Governor-General.                   | Australia, 56.  | March 1 (Rec. Apr. 2.)     | Transmits copy of a memorandum by the Attorney-General of the Commonwealth on the report of the Committee on the law of copyright, expressing general approval of the Convention, but raising certain points for consideration.  | 41    |

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| 1910.      |                       |                        |                        |   |       |
| 48         | The Governor ...      | Natal, Telegram 1.     | April 2 (Rec. Apr. 2.) | States that his Ministers concur in the proposal in No. 46.   | 42    |
| 49         | The Governor-General. | Canada, Telegram       | (Rec. Apr. 2, 1910.)   | States that the Canadian Government are prepared to accept the proposal contained in No. 46, and that their representative will be prepared to discuss the question at large. | 42    |
| 50         | The Governor ...      | Newfoundland, Telegram | (Rec. Apr. 5.)         | States that Ministers agree to proposal in No. 46.  | 43    |
| 51         | Ditto ...             | Transvaal, Telegram 2. | April 6 (Rec. Apr. 6)  | Ditto ...   | 43    |
| 52         | Ditto ...             | New Zealand, Telegram. | (Rec. April 7)         | Ditto ...   | 43    |
| 53         | The Governor-General. | Australia, Telegram.   | (Rec. April 12)        | States that Ministers agree to proposal in No. 46, subject to the conference being advisory only.   | 43    |



CORRESPONDENCE

WITH THE

SELF-GOVERNING DOMINIONS

RELATING TO THE

LAW OF COPYRIGHT.

48079

No. 1.

THE SECRETARY OF STATE TO THE GOVERNORS-GENERAL AND GOVERNORS.

(Canada.)

(Cape.)

(Australia.)

(Natal.)

(New Zealand.)

(Newfoundland.)

(Miscellaneous.)

MY LORD,  
SIR,

Downing Street, January 11, 1907.

WITH reference to Mr. Chamberlain's circular despatch of the 18th of September, 1900,\* and to subsequent correspondence on the subject of Copyright, I have the honour to transmit to you copies of clauses which it is proposed to insert in Literary and Artistic Copyright Bills for applying them to British Possessions.

2. These clauses have been drafted in substitution for those in the Bills prepared in 1900, with a view to meeting the objections raised by the Governments of certain Responsible Government Colonies to the corresponding clauses in the old Bills; and I should be glad if you would invite your Ministers to give them consideration and to furnish me with an expression of their views at an early date.

3. It is not at present proposed in any legislation which may be introduced on the subject of Copyright to depart in other respects from the general lines of the Bills of 1900, the other clauses of which were in the main approved by the Colonies.

I have, &c.,  
ELGIN.

Enclosure in No. 1.

COPYRIGHT.

DRAFT CLAUSES PROPOSED TO BE INSERTED IN LITERARY AND ARTISTIC COPYRIGHT BILLS FOR APPLYING THEM TO BRITISH POSSESSIONS.

A.—(1) Nothing in this Act shall affect any right of the legislature of any colony possessing responsible government to legislate respecting copyright within that colony of works first produced in that colony.

(2) Any such legislature may adopt the provisions of this Act either without modifications, or subject to such modifications as may seem necessary to adapt the provisions of this Act to the local requirements of the colony.

Applica-  
tion of Act  
to colonies  
possessing  
responsible  
Govern-  
ment.

\* Not printed.



Provided that any Bill adopting this Act subject to any modifications, shall contain a provision reserving it for the signification of His Majesty's pleasure.

(3) Upon the adoption of this Act in any such colony, this Act shall come into operation in that colony either without modifications or subject to such modifications as may be contained in the colonial Act.

Proclamation of Act. B. This Act shall be proclaimed in every British possession other than a colony having a responsible government, by the Governor as soon as may be after he receives notice thereof, and shall come into operation in that possession on the day mentioned in the proclamation.

Importation of foreign reprints into British possession. C.—(1) In any British possession in which this Act has come into operation, the provisions of this Act as to the importation of copies of copyright books into the United Kingdom shall, with the necessary modifications, apply to the importation of copies of copyright books into that possession, subject to such provisions with respect to the notice to be given by the owner of the copyright and otherwise as the legislature of that possession may determine.

(2) Provided that where it appears to His Majesty in Council that, having regard to the position, size, or other circumstances of any British possession, foreign reprints of books first published in the United Kingdom and entitled to copyright therein ought to be permitted to be imported into that possession, and that effectual and reasonable provision has been made by the law of that possession for all following objects; namely—

- (a) for preventing the importation into that possession of foreign reprints except according to this Act, and any Order in Council made in pursuance thereof;
- (b) for imposing a reasonable percentage as compensation to the author on all foreign reprints imported into that possession under this Act; also
- (c) for providing that such importation shall take place only through and subject to the supervision of some Government Department, whose duty it shall be to stamp any reprint so imported with notice of the percentage having been paid, and to transmit the sums so paid to the owner of the copyright;
- (d) for any other objects for which in the opinion of His Majesty in Council provision ought for the purposes of this Act to be made;

His Majesty may, by Order in Council, direct that from and after the day of the date of the Order, or such later day as may be specified in the Order, any person may, notwithstanding anything in any Act or law, import into that possession foreign reprints of any book first published in the United Kingdom whether published before or after the passing of this Act.

(3) All Orders in Council and Ordinances made in pursuance of the Colonial Copyright Act, 1847, shall remain in force in the same manner as if this Act had not passed.

Power of legislature of British possession as to local editions. D.—(1) If in any British possession in which this Act has come into operation the following circumstances occur, that is to say:—

If a book has been first lawfully published in any other part of His Majesty's dominions, and it is proved to the satisfaction of an officer appointed by the Government of that possession to receive such proof that the owner of the copyright has lawfully granted either a licence to import for sale in that possession or a licence to reproduce therein by any process an edition or editions of any such book designed for sale only in that possession,

it shall be lawful for the legislature of that possession by Act or Ordinance to provide for the prohibition of the importation, except with the written consent of the licensee, into that possession of any copies of the book printed elsewhere, without such licence as aforesaid, except that two copies may be specially imported for the *bonâ fide* use of each of the public free libraries, of the university and college libraries, and of the law libraries of any duly organised law institution or society for the use of its members.

(2) Where a licence has been granted under this section for any British possession, any copy of the book produced under the licence shall, if found in any other part of His Majesty's dominions, be deemed a pirated copy, and be treated accordingly.

12713

No. 2.

NEW ZEALAND.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 9.10 a.m., 11th April, 1907.)

TELEGRAM.

In reply to your despatch, Miscellaneous, 11th January,\* Copyright, my Government raise no objection to action proposed.—PLUNKET.

14764

No. 3.

NEWFOUNDLAND.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 27th April, 1907.)

(No. 57.)

My Lord,

Government House, St. John's, 8th April, 1907.

REFERRING to your despatch, Miscellaneous, of 11th January last,\* relating to the subject of copyright, I have the honour to transmit herewith a letter which I have received containing the remarks made upon the above-mentioned subject by the Attorney-General, Sir Edward Morris.

I have, &c.,  
WM. MACGREGOR.

Enclosure in No. 3.

Sir,

Colonial Secretary's Office, St. John's, Newfoundland, 3rd April, 1907.

REFERRING to your favour of the 5th February, covering despatch, Miscellaneous, of date 11th January last, from the Right Honourable the Secretary of State for the Colonies, in relation to the subject of copyright, I have the honour to state that the Minister of Justice has now forwarded a report upon the clauses proposed to be inserted in the Imperial Act applying the provisions of the same to British Possessions.

Sir Edward Morris remarks, with reference to Clause C, 2 (c), to which Your Excellency directed attention, that such is already the law of the Colony, as are also Clause C, 2 (a), except as regards Orders in Council, and Clause C, 2 (b).

The Minister of Justice does not see any objection to the draft clauses proposed to be inserted in Literary and Artistic Copyright Bills for applying them to British Possessions.

I have, &amp;c.,

ARTHUR MEWS,

Deputy Colonial Secretary.

His Excellency

Sir William MacGregor, K.C.M.G., C.B.

&c., &c., &c.,  
Governor.

16045

No. 4.

NATAL.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 4th May, 1907.)

[Answered by No. 6.]

(No. 49.)

Government House, Pietermaritzburg,

Natal, 8th April, 1907.

My Lord,

With reference to your despatch, Miscellaneous, of the 11th January last,\* transmitting copies of clauses which it is proposed to insert in Literary and Artistic

\* No. 1.



Copyright Bills for applying them to British Possessions, I have the honour to inform you that, before expressing any opinion on the draft clauses, Ministers would be glad if the objections raised by the Governments of certain Responsible Government Colonies to the corresponding clauses in the old Bills, referred to in the second paragraph of your despatch, as well as their present attitude to the proposed clauses could be furnished for the information of this Government.

I have, &c.,  
HENRY McCALLUM.

17812

No. 5.

CAPE OF GOOD HOPE.

THE GOVERNOR TO THE SECRETARY OF STATE.

(Received 18th May, 1907.)

(No. 122.)

My LORD, Government House, Cape Town, 25th April, 1907.

In reply to your despatch, Miscellaneous, of 11th January,\* I transmit a Minute which I have just received from Ministers, forwarding a report from the Attorney-General on the subject of the clauses which it is proposed to insert in Literary and Artistic Copyright Bills for applying them to British Possessions.

2. Ministers concur in the Attorney-General's report, which is to the effect that the draft clauses satisfy the main objections originally submitted; but that there are essential differences between them and the recently enacted Cape Statute, No. 46 of 1905. The Attorney-General states, however, that the consideration of those differences may be postponed for the present.

3. I enclose a copy of the Act No. 46 of 1905† for facility of reference.

I have, &c.,  
WALTER HELY-HUTCHINSON.

Enclosure in No. 5.

MINUTE.

(No. 1/267.)

Prime Minister's Office, Cape Town, 24th April, 1907.

Ministers have the honour to acknowledge the receipt of His Excellency the Governor's Minute, No. 94, of the 30th January, 1907, forwarding copy of a despatch from the Right Honourable the Secretary of State for the Colonies, transmitting the text of certain clauses proposed to be inserted in Literary and Artistic Copyright Bills for applying them to British Possessions.

In reply, Ministers beg to forward to His Excellency, for the favour of transmission to the Secretary of State, a short report by the Attorney-General on the draft clauses in question, with the terms of which Ministers concur.

E. H. WALTON.

## REPORT OF THE ATTORNEY-GENERAL.

Attorney-General's Office, Cape Town, 23rd April, 1907.

The draft clauses satisfy the main objections stated by my predecessor in office to the Bill as originally submitted. I may point out that there are essential differences between the Bill and our recently enacted Statute, the Copyright in Works of Art Act, No. 46 of 1905, the consideration of which, however, may be postponed for the present.

VICTOR SAMPSON.

\* No. 1.

† Not reprinted.

16045

No. 6.

NATAL.

THE SECRETARY OF STATE TO THE GOVERNOR.

[Answered by No. 7.]

(Miscellaneous.)

SIR,

Downing Street, 29th May, 1907.

I HAVE the honour to acknowledge the receipt of your despatch, No. 49, of the 8th of April, 1907,\* respecting the draft clauses which it is proposed to insert in the Literary and Artistic Copyright Bills for applying them to British Possessions, and to request you to lay before your Ministers the enclosed copy of a minute of the Privy Council of the Dominion of Canada embodying the observations of the Minister within whose province the matter of copyright lies in the Dominion. I trust that this will afford your Government the information desired.

I have, &c.,  
ELGIN.

Enclosure in No. 6.

PRIVY COUNCIL, CANADA.

(6861/04.)

EXTRACT from a Report of the Committee of the Honourable the Privy Council, approved by the Governor-General on the 6th February, 1904.

The Committee of the Privy Council have had under consideration certain Colonial Office despatches, dated 18th September, and 4th December, 1900, respectively, on the subject of proposed amendments to the laws of copyright, also a cable despatch, dated 26th February, 1902, urging a reply to the above, expressing the views of the Dominion Government on the proposed bills to be introduced into the Imperial Parliament.

The Minister of Agriculture, to whom the matter was referred, submits that while Canada appreciates the advantage of uniformity in the law of copyright throughout the British Possession, and is willing to join the Imperial authorities and the other Colonial authorities in bringing the same about, he is respectfully of the opinion that in any bills framed for that purpose recognition should be made of the right which she has, under Section 91 of The British North America Act, of the right which she has, under Section 91 of The British North America Act, to legislate on the subject, so far as the Dominion is concerned; and inasmuch as the principle of the present Bills ignores that right, and it is thereby proposed that hereafter Canada shall have only a modified and restricted power where she now enjoys a full and general one the principle of the Bills would require to be materially changed before they would be acceptable to Canada.

As to the merits of the several provisions of the Bills, the clauses which materially affect Canada are numbers 33, 34, 35, and 36 of the Copyright Bill of 1900.

Clause 33 reads:—

"This Act shall be proclaimed in every British Possession by the Governor as soon as may be after he receives notice thereof, and shall come into operation in such Possession on the day mentioned in the said Proclamation."

This should be changed so as to read that the Act may be proclaimed in Canada by the Governor in Council, and shall come into operation on the day mentioned in the Proclamation.

Clause 34 reads:—

"(1) Where it appears to Her Majesty in Council, that having regard to the position, size or other circumstances of any British Possession, foreign reprints of books first published in the United Kingdom and entitled to copyright therein ought to be permitted to be imported into that possession.

\* No. 4.



and that effectual and reasonable provision has been made by the law of that possession for all the following objects, namely:—

- "(a) For preventing the importation into that possession of foreign reprints except according to this Act, and any Order in Council made in pursuance thereof;
- "(b) For imposing a reasonable percentage as compensation to the author on all foreign reprints imported into that possession under this Act; also
- "(c) For providing that such importation shall take place only through and subject to the supervision of some Government Department, whose duty it shall be to stamp any reprint so imported with notice of the percentage having been paid and to transmit the sums so paid to the owner of the copyright;
- "(d) For any other objects for which in the opinion of Her Majesty in Council provision ought for the purpose of this Act to be made;

Her Majesty may, by Order in Council, direct that from and after the day of the date of the Order, or such later day, as may be specified in the Order, any person may, notwithstanding anything in any Act or law, import into such possession foreign reprints of any book first published in the United Kingdom whether published before or after the passing of this Act.

"2. All Orders in Council and Ordinances made in pursuance of the Colonial Copyright Act, 1847, shall remain in force in the same manner as if this Act has not passed."

This clause provides for an arrangement largely the same as that of the Foreign Reprints Act, 1847, which was in force in Canada until 1895, when it proved so unsatisfactory that it was terminated. It is not deemed desirable to restore this arrangement.

Clause 35 reads:—

"In the case of a legislature of any British Possession if the following circumstances occur, that is to say:—

"If a book has been first lawfully published in any other part of Her Majesty's Dominions, and it is proved to the satisfaction of an officer appointed by the Government of such possession to receive such proofs that the owner of the copyright has lawfully granted either a licence to import for sale in such British possession or a licence to reproduce therein by any process an edition or editions of any such book designed for sale only in such British possession;

"It shall be lawful for the legislature of such possession by Act or Ordinance to provide for the prohibition of the importation, except with the written consent of the licensee, into such possession of any copies of such book printed elsewhere, except under such licence as aforesaid, except that two copies may be specially imported for the *bona fide* use of each of the public free libraries, of the university and college libraries and law libraries of any duly organized law institution or society for the use of its members.

"Where a licence has been granted under this section for any British possession any copy of the book produced subject to such licence shall, if found in any other part of Her Majesty's dominions, be deemed a pirated copy, and be treated accordingly."

This clause is substantially the same as the Act of the Canadian Parliament to amend the Copyright Act, 63-64 Victoria, Chapter 25, which has been found to work satisfactorily. It is to be observed that this Act was passed in 1900, and is now in force.

Clause 36 reads:—

"The legislature of any British possession may by law or ordinance, duly passed according to the constitution of such possession, modify or add to any provisions of this Act relating to Copyright, performing right or lecturing right, in so far as relates to a book first published in such possession, or to a dramatic or musical work first performed in such possession, or to a lecture first delivered in such possession; but any such modifications or additions shall be of force only in respect of such book, dramatic or musical

work or lecture, within such possession, and shall not affect the application of this Act to such book, dramatic or musical work or lecture in any place not within the limits of the possession."

This clause would be particularly objectionable, inasmuch as it would tend to restrict Canada's right of legislation to the cases therein mentioned, while at present under The British North America Act, as before stated, her right is full and general.

The Committee advise that the Governor-General be moved to transmit an answer in the sense of this Minute to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for approval.

JOHN J. MCGEE,

Clerk of the Privy Council.

35457

No. 7.

NATAL.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 5th October, 1907.)

[Answered by No. 8.]

(No. 156.)

Government House, Pietermaritzburg,  
Natal, 9th September, 1907.

MY LORD,

WITH reference to your Lordship's Miscellaneous despatch of the 29th May, 1907,\* and to previous correspondence respecting the draft clauses proposed to be inserted in the Literary and Artistic Copyright Bills for applying them to British Possessions, I have the honour to enclose a copy of a minute, dated the 6th instant, by the Prime Minister, in which exception is taken to the proviso to Section (2) of Draft Clause A as over-riding Clause VIII. of the Royal Instructions, dated the 20th July, 1893.

I also enclose a copy of the Attorney-General's minute of the 9th February to which reference is made by the Prime Minister.

I have, &c.,  
M. NATHAN.

Enclosure in No. 7.

PRIME MINISTER, to His Excellency the GOVERNOR, 6th September, 1907.

MINUTE

Ministers concur in the views expressed by the Attorney-General in his minute of 9th February last that Section 2 of the clauses which it is proposed to insert in these enactments curtails the right of this Parliament to legislate within the terms of the Colony's Charter and overrides the Royal Instructions under which the Governor is to be guided in reserving or allowing Bills passed by the Natal Legislature.

Ministers are not prepared to offer their views on the draft clauses forwarded with the Secretary of State's despatch of the 11th January last unless the proviso in Clause 2 is withdrawn.

F. R. MOOR,  
Prime Minister.

6th September, 1907.

MINUTE, ATTORNEY-GENERAL, to MINISTER OF JUSTICE, 9th February, 1907.

I cannot advise Government to in any way consent to a curtailment of the rights of our Parliament to legislate within the terms of the Colony's Charter.

The Royal Instructions lay down the rules by which the Governor is to be guided in reserving or allowing Bills passed by Parliament. Draft Clause 2 seeks to override the Royal Instructions.



The clauses affecting the freedom to legislate, as well as those which may amount to legislation by the Imperial Parliament in Colonies enjoying Responsible Government on the subject of copyright, require to be fully discussed from a constitutional point of view.

Before this Government expresses any opinion on the subject the objections raised by certain Responsible Government Colonies in 1900 and their present attitude to the proposed clauses should be fully disclosed.

The proposal appears to me to involve a very serious question.

G. A. DE ROQUEFEUIL LABISTOUR,  
Attorney-General.

9th February, 1907.

17812

No. 8.

NATAL.

THE SECRETARY OF STATE to THE GOVERNOR.

(No. 132.)

SIR,

Downing Street, 31st December, 1907.

WITH reference to your despatch, No. 156, of the 9th September last,\* I have the honour to transmit to you, to be laid before your Ministers, copies of despatches† from the Governors of the Cape Colony and Newfoundland, together with a copy of a telegram‡ from the Governor of New Zealand on the subject of the clauses proposed to be inserted in Literary and Artistic Copyright Bills for applying them to British Possessions.

I have not yet received any communications on the subject from the Government of Canada or from the Government of the Commonwealth of Australia.

I have, &c.,  
ELGIN.

2829

No. 9.

AUSTRALIA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 25th January, 1908.)

(No. 328.)

MY LORD,

Governor-General's Office, Melbourne, 24th December, 1907.

WITH reference to your Lordship's Miscellaneous despatch of the 11th January last,§ asking to be furnished with an expression of the views of my Ministers on certain clauses which it is proposed to insert in Literary and Artistic Copyright Bills for applying them to British Possessions, I have the honour, at the instance of my Prime Minister, to transmit herewith, for your Lordship's information, a copy of a memorandum which has been prepared by the Attorney-General of the Commonwealth, and which embodies the views of the Commonwealth Government on the matter.

I have, &c.,  
NORTHCOTE,  
Governor-General.

Enclosure in No. 9.

(450/07. T. and C. 07/2497.)

MEMORANDUM on certain Draft Clauses proposed to be inserted in the Imperial Bills relating to Literary and Artistic Copyright.

A despatch from the Secretary of State for the Colonies, forwarding certain draft clauses (marked A, B, C, and D) which are proposed to be inserted in a

\* No. 7.

† Nos. 3 and 5.

‡ No. 2.

§ No. 1.

Literary Copyright Bill and an Artistic Copyright Bill in the United Kingdom, has been forwarded to me for consideration.

In 1900, a Literary Copyright Bill and an Artistic Copyright Bill were submitted to the British Colonies and were, in the main, approved.

Certain objections were raised by the Governments of some of the Colonies having responsible Government to the clauses relating to the application of the Bills to the Colonies, and the proposed clauses have been drafted in substitution for those objected to.

#### Draft Clause A.

Draft Clause A will apply to Australia and other British Possessions whether the Acts are adopted or not. Its main intention appears to be to secure the adoption of the Acts in British Possessions having Responsible Government. But, as drafted, it would probably have a restrictive effect on the legislative power of the Commonwealth.

The Commonwealth Parliament has, at present, by virtue of the Constitution, power to legislate as to copyright in Australia whether the works, the subject of the copyright, are produced in Australia or outside Australia.

The Clause, as framed, may possibly be read as restricting the powers of the legislature of a British Possession having Responsible Government to the adoption of the Acts, with or without modification, and to the passing of legislation with respect to copyright in works produced in the Possession.

If the Commonwealth were to adopt the Acts under the power contained in the clause as at present drafted, there is reason to fear that it would part with a considerable portion of its powers to legislate with respect to copyright in works produced outside Australia. Also, it would seem to be doubtful whether, notwithstanding the provision for modification, the Acts could be repealed by local law after being adopted.

In my opinion, the draft clause is unsatisfactory.

#### Draft Clause B.

Draft Clause B would not apply to the Commonwealth, and no criticism of that clause is necessary.

#### Draft Clause C.

Draft Clause C is, in my opinion, a proper subject for a local law. I do not think it desirable for a law made by the Parliament of the United Kingdom to prohibit importation into Australia, nor do I think it desirable for Orders in Council to be made in the United Kingdom which would affect the importation of goods into Australia.

#### Draft Clause D.

The idea in this clause is unusual. The clause purports to confer certain powers of legislation on the Colonial legislatures, apparently to be exercised from time to time on proof of certain matters; but, as the Commonwealth has, under its present powers, ample power to legislate in the direction indicated, the clause would be of no advantage so far as we are concerned.

LITTLETON E. GROOM,  
Attorney-General.

3rd December, 1907.

9781

No. 10.

THE SECRETARY OF STATE to THE GOVERNORS-GENERAL AND GOVERNORS.

[Answered by Nos. 11 to 15.]

(Australia. No. 95.)

(Cape. No. 49.)

(New Zealand. No. 45.)

(Orange River Colony. No. 33.)

(Canada. No. 149.)

(Transvaal. No. 71.)

(Newfoundland. No. 43.)

(Natal. No. 38.)

MY LORD,  
SIR,

Downing Street, 20 March, 1908.

I HAVE the honour to transmit to [Your Excellency] [you], to be laid before



your Ministers, copy of a note from the German Ambassador at this Court inviting His Majesty's Government to send representatives to an International Copyright Conference at Berlin on the 14th of October next. I also transmit copies of printed papers containing the "Documents Préliminaires" for the Conference, and of a note drawn up by the Board of Trade commenting on the suggested amendments to the Berne Convention.

I should be glad to receive the observations of your Ministers upon the suggested amendments to the existing Convention.

2. His Majesty's Government consider that the instructions given to the British delegates to the Conference should follow the same lines as those given to the delegates who attended the Paris Conference of 1896 (see pp. 1-4 of the enclosed Parliamentary Paper [C. 8441]), and they do not propose that any amendments involving an alteration of British legislation shall be accepted by the British delegates.

3. I presume that this procedure will be acceptable to your Ministers.

I have, &c.,  
ELGIN.

Enclosure 1 in No. 10.

YOUR EXCELLENCY,

German Embassy, February 22, 1908.

At the International Conference which was held at Paris in 1896 for the revision of the Berne Agreement of September 9th, 1886, respecting the formation of an International Union for the protection of works of literature and art, it was unanimously agreed that the next Conference should be held at Berlin within six to ten years from that date.

Now that the preparations for the Conference which were elaborated in conjunction with the Bureau at Berne have been terminated, there is nothing to prevent the meeting of the Conference. The printed matter relating to this subject should already have been communicated to the Governments of the States party to the Union by the Berne Bureau.

With the consent of His Majesty the Emperor, the German Government have decided to convoke the Conference for October 14th next at 11 a.m. in the Reichstag Buildings at Berlin. The Imperial Government have the honour to invite the British Government to appoint delegates, provided with the necessary full powers, to officially represent them at the Conference.

In accordance with the procedure adopted at the Paris Conference, the German Government will, on the assumption that the other Powers of the Union agree to such a course, invite a large number of those States which have not yet become members of the Union to be represented semi-officially at the Conference.

The German Government trust that they will succeed, with the assistance and support of the other States of the Union, in effectively promoting the aims of the Conference and in drawing up a uniform arrangement in harmony with the modern principles of author's right.

I should be grateful if Your Excellency would inform me, at the earliest possible moment, whether the British Government propose to send delegates to the Conference and, if so, what would be the number and names of such delegates.

I have, &c.,  
P. METTERNICH.

Enclosure 2 in No. 10.

BERLIN COPYRIGHT CONFERENCE, 1908.

NOTE on the chief suggested amendments to the Berne Convention.

At present the International Copyright Union is based on three documents, the Berne Convention of 1886, the Additional Act of Paris, and the Interpretative Declaration, the two latter having been adopted at the Paris Conference of 1896. Great Britain is a signatory of the original Convention and of the Additional Act, but has not accepted the Interpretative Declaration.

One of the main objects of the proposed Berlin Conference, as indicated by Number V. of the "Voeux" adopted at Paris in 1896, is to draw up a single revised text of the Convention.

Number III. of the "Preliminary Documents" issued by the Berne Copyright Bureau in connection with the forthcoming Conference gives this text as proposed by the German Government. It contains the original Convention amended by the incorporation of the Additional Act of Paris and the Interpretative Declaration, with certain further amendments.

The chief points in which an alteration is proposed in the provisions to which Great Britain is at present a signatory are as follows:—

In the enumeration of "Literary and Artistic Works" (Article 4 of the existing Convention) it is proposed to insert "*œuvres d'art appliqué à l'industrie*."

The works which it is intended to cover by this expression are not at present protected by English Copyright law, being dealt with under the law relating to Designs.

Works of architecture, which are not protected by English law, are also to be included. At present such works are admitted to the benefits of the Union in the countries where they are already protected as such (Final Protocol, Article 1 A. as amended by Article 2 of the Additional Act of Paris). (It is proposed to provide that the construction of a work of architecture shall not constitute publication (Article 3).)

According to the existing Convention (Article 2) the duration of protection in other countries of the Union cannot exceed that enjoyed in the country of origin of the work. This restriction disappears in the new Text which provides (Article 2) that the enjoyment and exercise of the rights granted to natives in countries of the Union other than the country of origin shall be independent of the existence of protection either in the country to which the author belongs or in the country of origin. Subject to the enjoyment of the minimum rights stipulated by the Convention, the extent and duration of copyright is to be governed exclusively by the legislation of the country in which protection is claimed.

This proposal conflicts with Section 2 (3) of the International Copyright Act, 1886.

The last paragraph of the proposed Article 2 provides that the enjoyment and exercise of the totality of rights under the Convention shall not (except in the case of certain newspaper articles) be subject to the accomplishment of any formality or extrinsic condition. This expresses in more precise language the intention of the similar provision in Article 2 of the existing Convention, following the lines of Article 1 of the Interpretative Declaration.

Paragraph 2 of this Article involves a definition of "publication" which is not that recognised in English law, *e.g.*, the public representation of a dramatic piece is held to be publication by the English Courts.

Paragraph 3 provides that for their works published for the first time in any country of the Union, authors belonging to any other country (not necessarily of the Union) shall enjoy rights in the former country at least as extensive as those of native authors.

This appears to be in accordance with English law.

At present express reservation of performing right on copies of music is necessary both under the Convention and in English law, in order to constitute unauthorised performance an infringement. It is now proposed to abolish this restriction (Article 4 (a)).

Article 4 (b), giving the author the exclusive right to turn a novel into a drama and *vice versa*, is also (probably) contrary to English law.

This Article provides that authors shall have an unrestricted translating right for the full term of copyright.

The original Convention gave a 10 years' translating right, while the Interpretative Declaration provided that if an author published a translation into any language during that period, he thereby gained the exclusive right of translating into that language for the full term of copyright.

Under Section 5 (2) of the International Copyright Act, 1886, the full translating right in England can only be obtained by the publication of a translation in the English language within "ten years or any other term prescribed by the Order" (in Council). (The Order in Council of 28th November, 1887, prescribes no other term.)

Article 3 of the Final Protocol to the original Convention is as follows:—

"It is understood that the manufacture and sale of instruments for the

Article 1  
(of the  
proposed  
revised  
text).

Article 2.

Article 3.

Article 4.

Article 5.

Article 7.



mechanical reproduction of musical airs which are copyright shall not be considered as constituting an infringement of musical copyright."

(NOTE.—This does not legalize public performance by means of such instruments.)

It has been doubted whether this provision applies to such instruments as pianolas, gramophones, &c., or rather to the perforated sheets, discs, &c., manufactured for use with them.

In England it has been decided that the manufacture of perforated sheets of music for "Aeolians" is not an infringement under English law (*Boosey v. Whight*, 1899).

It is now proposed in Article 7 to provide that the author shall have the sole right in the first instance (a) to make such reproductions, (b) to authorise public performance by means of such reproductions.

18628

No. 11,  
NATAL.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 23 May, 1908.)

(No. 68.)

My LORD, King's House, Durban, Natal, 30 April, 1908.

WITH reference to Lord Elgin's despatch, No. 38, dated the 20th March, 1908,\* on the subject of the International Copyright Conference to be held at Berlin on the 14th October next, I have the honour to report that the procedure therein suggested will be acceptable to the Government of Natal.

I have, &c.,  
M. NATHAN.

18613

No. 12.  
CAPE OF GOOD HOPE.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 23 May, 1908.)

(No. 89.)

My LORD, Government House, Cape Town, 5 May, 1908.

I HAVE the honour to transmit to your Lordship, with reference to your predecessor's despatch, No. 49, of 20th March last,\* a copy of a Minute from Ministers on the subject of an International Copyright Conference at Berlin.

I have, &c.,  
WALTER HELY-HUTCHINSON.

Enclosure in No. 12.

MINISTERS to GOVERNOR.

(Minute, No. 1/244.)

Prime Minister's Office, Cape Town, 4 May, 1908.

Ministers have the honour to acknowledge receipt of His Excellency the Governor's Minute, No. 293, of the 13th ultimo, covering a despatch from the Right Honourable the Secretary of State for the Colonies, on the subject of an International Copyright Conference at Berlin on the 14th of October next, and to state in reply that the procedure proposed by His Majesty's Government in connection therewith is acceptable to the Government of this Colony.

N. F. DE WAAL.

19463

No. 13.

TRANSVAAL.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 30 May, 1908.)

(No. 140.)

My LORD, Governor's Office, Johannesburg, 11 May, 1908.

WITH reference to your predecessor's despatch, No. 71, of 20th March,\* I have the honour to enclose, for your information, a copy of a Minute from Ministers, on the subject of an International Copyright Conference to be held at Berlin on the 14th of October next.

I have, &c.,  
SELBORNE,  
Governor.

Enclosure in No. 13.

(Minute, No. 287.)

Prime Minister's Office, Pretoria, 6 May, 1908.

Ministers have the honour to acknowledge the receipt of His Excellency the Governor's Minute, No. 67/2, of the 10th ultimo, forwarding copy of despatch, Transvaal, No. 71, dated the 20th March, from the Right Honourable the Secretary of State for the Colonies on the subject of an International Copyright Conference to be held at Berlin on the 14th October next.

2. Ministers have the honour to state that the procedure outlined in paragraph 2 of the despatch from the Secretary of State will be acceptable to them.

3. Ministers have no observations to make upon the suggested amendments of the existing Convention.

LOUIS BOTHA.

21343

No. 14.

ORANGE RIVER COLONY.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 13 June, 1908.)

(No. 70.)

My LORD, Governor's Office, Bloemfontein,  
Orange River Colony, 25 May, 1908.

I HAVE the honour to acknowledge the receipt of your predecessor's despatch, No. 33, of the 20th March last,\* enclosing copy of a note from the German Ambassador inviting His Majesty's Government to send representatives to the International Copyright Conference to be held at Berlin on the 14th October next, and also copies of the "Documents Préliminaires" and of a note drawn up by the Board of Trade commenting on the suggested amendments to the Berne Convention.

2. The question as to the position to be taken up by the British delegates to the Berlin Conference is receiving the attention of my Ministers and a further communication on this subject will be addressed to your Lordship as soon as possible.

I have, &c.,  
HAMILTON GOOLD-ADAMS,  
Governor.



No. 15.  
AUSTRALIA.

THE GOVERNOR-GENERAL TO THE SECRETARY OF STATE.

(Received 10 August, 1908.)

[Answered by No. 19.]

(No. 188.)

Commonwealth of Australia,  
My LORD, Governor-General's Office, Melbourne, 7 July, 1908.  
REFERRING to your Lordship's predecessor's despatch, No. 95, dated 20th March last,\* relative to the International Copyright Conference to be held in Berlin in October next, I have the honour to transmit, herewith, for your Lordship's information, copy of a despatch which has been addressed to me by my Prime Minister upon the subject.

I have, &c.,  
NORTHCOTE,  
Governor-General.

Enclosure in No. 15.

(P.M. 08/2632.)

Commonwealth of Australia, Prime Minister,  
My LORD, Melbourne, 7 July, 1908.  
WITH reference to the Secretary of State for the Colonies' despatch of the 20th March, No. 95, relative to the International Copyright Conference to be held at Berlin in October next, I have the honour to invite Your Excellency to be so good as to inform Lord Crewe that it is not considered advisable to consent to any amendments which might give greater rights in Australia to the authors of works in countries of the Copyright Union than those conferred by Commonwealth law on authors of works produced in Australia; the procedure therefore proposed by the Imperial authorities in regard to the suggested amendments to the existing Convention is acceptable to this Government.  
2. In conveying this intimation to the Secretary of State, I shall be pleased if Your Excellency will submit the following observations regarding the suggested amendments:—

ARTICLE 1.

It is proposed in the definition of "Literary and Artistic Works" to include "œuvres d'art appliqué à l'industrie" and also works of architecture. The first-named are protected in Australia by the Designs Act, 1906. Published plans are subjects of copyright under the Copyright Act, 1905 (see definition of "Book," Section 4), but the Act does not extend to protect the work of architecture itself.

ARTICLE 2.

In this article it is proposed that, subject to the minimum rights stipulated by the Convention, the extent and duration of copyright is to be governed exclusively by the legislation of the country in which protection is claimed. This proposal conflicts with Section 2 (3) of the International Copyright Act, 1886; otherwise there seems to be no objection to it. It is also proposed that the conditions and formalities in the country of origin alone are to be necessary to copyright throughout the Union. In this connection it is pointed out that, under the Commonwealth Copyright Act, 1905, registration is necessary before owners of copyright in works protected in Australia by Imperial legislation can avail themselves of the remedies provided by the Act.

ARTICLE 3.

In this article a definition of "publication" is proposed which is not in accordance with English law. Under the definition in the Commonwealth Copyright Act of "publish" in relation to a book, the public representation of a dramatic piece would not amount to publication of the work as a book.

ARTICLE 4.

In this article it is proposed that the express reservation of the performing rights on copies of music should not be necessary. Under the Commonwealth Copyright Act the reservation is necessary.

\* No. 10.

It is also proposed to give to the author of a book the right to turn it into a drama and *vice versa*. The Commonwealth Copyright [Act] gives this right (Section 13).

ARTICLE 5.

In this article it is proposed that authors shall have an unrestricted right of translation. Under the Commonwealth Copyright Act the owner of the copyright has an exclusive right to authorise translation (Section 13) subject to the provision (Section 30) that if a translation is not made within 10 years the Minister may, after certain notice to the owner of the copyright, grant a permit to make a translation.

ARTICLE 7.

In this article it is proposed to provide that the author of a musical work shall have the sole right to make reproductions such as perforated sheets, &c., for pianolas, &c. This matter is not expressly dealt with in the Commonwealth Copyright Act, and it is considered that the decisions under English law are applicable.

I have, &c.,  
ALFRED DEAKIN.

Governor-General  
His Excellency  
The Right Honourable  
Lord Northcote, G.C.M.G., G.C.I.E.,  
&c., &c., &c.

20172

No. 16.

THE SECRETARY OF STATE TO THE GOVERNORS-GENERAL AND GOVERNORS.

[Answered by Nos. 21, 22, 23, 25, and 26.]

|                         |                               |
|-------------------------|-------------------------------|
| (Canada. No. 542.)      | (Newfoundland. No. 132.)      |
| (Australia. No. 306.)   | (Cape of Good Hope. No. 185.) |
| (New Zealand. No. 149.) | (Natal. No. 157.)             |

Downing Street,  
MY LORD, [To Australia] 2 September, 1908.  
SIR, [To all others] 3 September, 1908.

WITH reference to my predecessor's despatch, No. [93] [57] [27] [26] [27] [18], of 21st February last,\* I have the honour to request you to inform your Ministers that His Majesty's Government have had under their consideration the replies of the various self-governing Dominions to the proposals of the Board of Trade for the enactment of an Imperial Act dealing comprehensively with copyright in the Empire.

2. It appears clear that there is no prospect of any general agreement on this question being arrived at at an early date, and His Majesty's Government have decided to abandon, at any rate for the present, the proposed legislation.

3. There are, however, certain specific points on which an amendment of the existing law is urgently needed, and His Majesty's Government consider that it would be desirable that these amendments—a list of which is enclosed—should be discussed by a subsidiary conference with a view to concurrent legislation, if agreement can be arrived at.

4. His Majesty's Government would be glad, therefore, if your Ministers would take the matter into their consideration, and intimate whether they are prepared to send a representative to such a conference, which, it is suggested, might with advantage be held in one of the self-governing Dominions, say, at Ottawa.

I have, &c.,  
CREWE.



Enclosure in No. 16.

COPYRIGHT LAW.

POINTS ON WHICH IT IS DESIRED THAT THE DOMINIONS SHOULD LEGISLATE.

*Literary Copyright.*

Under the existing law the term of copyright is the life of the author and 7 years, or 42 years, whichever is the longer.

It is desired to extend the term to 30 years (or possibly 50 years) after the end of the year of the author's death. The same provision would apply to the performing right in a dramatic or musical work, and to lecturing right.

It is desired to extend the scope of copyright to include the right to make abridgments and translations, to convert novels into dramas, and *vice versa*, to make adaptations, arrangements, &c., and (possibly) mechanical records of a musical work.

The existing law on some of these points is doubtful, and on others is contrary to the proposed provision.

A number of minor amendments are desired in the law relating to lecturing rights, copyright in abridgments, anonymous works, works produced by joint authors or a plurality of authors, posthumous works and collective works such as encyclopædias and periodicals.

*Artistic Copyright.*

The provisions relating to artistic copyright are contained in ten Statutes and differ materially according as they relate to (1) Engravings and Prints; (2) Sculpture; or (3) Paintings and Photographs. The statutory term of protection is, for instance, 28 years in the first case, 14 years and 14 more if the author survives in the second, and life and 7 years in the third.

It is desired to substitute a uniform set of provisions corresponding to those relating to Literary Copyright.

Under the Fine Arts Copyright Act, 1862, if a picture is sold by the painter the copyright lapses unless it is either expressly retained by him or expressly granted to the vendee.

It is desired to remedy this anomaly by vesting the copyright in the author, unless it is expressly assigned in writing.

It was decided in 1903 in the case of *Graves v. Corrie* that the copyright conferred by the *Fine Arts Copyright Act*, 1862, does not extend to the Colonies.

It is proposed to suggest that the Dominions might conveniently remove this anomaly by legislation on their own part.

20172

No. 17.

THE SECRETARY OF STATE TO THE GOVERNORS.

[Answered by Nos. 20 and 28.]

(Transvaal. No. 270.)

(Orange River Colony. No. 108.)

MY LORD,

SIR,

Downing Street, 3 September, 1908.

I HAVE the honour to transmit to you, for the information of your Ministers, copy of correspondence\* noted below on the subject of copyright in the Empire.

2. His Majesty's Government have carefully considered the whole question in view of the replies received from the self-governing Dominions, and as it appears clear that there is no possibility of general agreement on the question being arrived at at an early date, they have decided to abandon, at any rate for the present, the proposed legislation.

3. There are, however, certain specific points on which an amendment of the existing law is urgently needed, and His Majesty's Government consider that it would be desirable that these amendments—a list† of which is enclosed—should be

\* Nos. 1-7 and No. 3.

† Enclosure in No. 16.

discussed by a subsidiary conference with a view to concurrent legislation if agreement can be arrived at.

4. His Majesty's Government would be glad, therefore, if your Ministers would take the matter into their consideration and intimate whether they are prepared to send a representative to such a conference, which, it is suggested, might with advantage be held in one of the self-governing Dominions, say, at Ottawa.

I have, &c.,

CREWE.

SCHEDULE OF ENCLOSURES.

- (1.) Secretary of State. Miscellaneous. 11 January, 1907.
- (2.) The Governor, Newfoundland. No. 57. 8 April, 1907.
- (3.) The Governor, Natal. No. 49. 8 April, 1907.
- (4.) The Governor, New Zealand. Telegram. 11 April, 1907.
- (5.) The Governor, Cape. No. 122. 25 April, 1907.
- (6.) Secretary of State to Governor, Natal. Miscellaneous. 29 May, 1907.
- (7.) The Governor, Natal. No. 156. 9 September, 1907.
- (8.) The Governor-General of Australia. No. 328. 24th December, 1907.

30426

No. 18.

THE SECRETARY OF STATE TO THE GOVERNORS-GENERAL AND GOVERNORS.

(Sent 2.30 p.m., 14th September, 1908.)

TELEGRAM.

[Answered by Nos. 20 and 23.]

14th September [No. 1]. Referring to my despatch [Canada: No. 542\*] [Newfoundland: No. 132\*] [Australia: No. 306,\* of 2 September] [New Zealand: No. 149\*] [Cape: No. 185\*] [Transvaal: No. 270†] [Orange River Colony: No. 108†] [Natal: No. 157\*] of the 3rd September, Copyright Conference; after further consultation with Board of Trade I should be glad if your Ministers would not regard suggestion made in last few words of that despatch for meeting of Conference in one of self-governing Dominions as final. While I would still be glad to see it carried out, if possible, it may be found necessary, for purposes of convenience, to hold Conference, if agreed to, in London.—CREWE.

37813

No. 19.

THE SECRETARY OF STATE TO THE GOVERNORS-GENERAL AND GOVERNORS.

- |                    |                           |
|--------------------|---------------------------|
| (1. Natal.)        | (5. Australia.)           |
| (2. New Zealand.)  | (6. Cape of Good Hope.)   |
| (3. Canada.)       | (7. Transvaal.)           |
| (4. Newfoundland.) | (8. Orange River Colony.) |

(Confidential.)

MY LORD,

SIR,

Downing Street, 23 October, 1908.

WITH reference to [1. your despatch, No. 68, of 30 April last‡], [2. my predecessor's despatch, No. 45, of 20 March last§], [3. my predecessor's despatch, No. 149, of 20 March last§], [4. my predecessor's despatch, No. 43, of 20 March last§], [5. your predecessor's despatch No. 188, of 7 July last||], [6. your despatch, No. 89, of 5 May last¶], [7. your despatch, No. 140, of 11 May last\*\*], [8. your

\* No. 16. † No. 17. ‡ No. 11. § No. 10. ¶ No. 15. \*\* No. 13.



despatch, No. 70, of 25 May last\*), I have the honour to transmit to [Your Excellency], [you], for the confidential information of your Ministers, the accompanying copies of the instructions which have been issued to the British delegates to the International Conference of the Union for the Protection of Literary and Artistic Works, which is now sitting at Berlin, and of a declaration by His Majesty's Government as to their position with regard to copyright legislation.

I have, &c.,  
CREWE.

Enclosure in No. 19.

SIR EDWARD GREY to SIR H. BERGNE, MR. ASKWITH, and COUNT DE SALIS.

GENTLEMEN,

Foreign Office, October 9, 1908.

I HAVE appointed you to be the British Delegates to the International Conference of the Union for the Protection of Literary and Artistic Works, which is to assemble at Berlin on the 14th instant, and I have to furnish you with the following instructions for your guidance:—

The proposals to be discussed at the Conference are contained in the "Documents Préliminaires" issued by the International Bureau at Berne.

The fifth of the Résolutions passed at the last International Conference at Paris in 1896 was: "Il est désirable que des délibérations de la prochaine Conférence sorte un texte unique de Convention." His Majesty's Government have not yet been able to arrange amendments of the British Copyright Law which would be satisfactory both to the United Kingdom and to the self-governing Colonies, and are therefore not in a position to adhere to a revised text of the Convention, and you should make it clear that, unless and until the United Kingdom shall be in a position to adhere to a revised Convention, her copyright relations with the other countries of the Union shall remain governed by the original Convention of Berne and the Additional Act of Paris. You should, however, take part in the discussion of the amendments with a view to insuring that the revised text shall be in a form which the United Kingdom might accept without reservations.

In considering the wording of the revised text you should make it clear that the provisional acceptance by this country of any stipulations purporting to grant to foreign authors rights not at present recognized by her domestic law is conditional on its being possible to procure their recognition thereby at a later date.

You are further hereby authorized to sign those propositions of the Conference which you can accept within the limit of your instructions, provided that you record a declaration to the effect that the signature is subject to the consideration of the actual text by His Majesty's Government, who will consider themselves free to advise the King to ratify or not within the prescribed time according to circumstances. It must be made clear that His Majesty's Government are not pledged to confirm any arrangement which may be come to.

The King's full power, giving you the necessary authority for this purpose, is sent herewith.

The following observations may now be made as to the course which you should pursue during the deliberations of the Conference:—

The suggested amendments do not include a provision making a definite minimum period of protection obligatory in all countries. His Majesty's Government agree that such a provision would probably be inadvisable at present, but, in view of the stress which is laid in many quarters on the importance of a uniform period of protection in all countries, they are prepared to regard with sympathy any steps tending to realize such uniformity.

*Article 2.*—With regard to the words, "ainsi que des troiis particuliers stipulés par la présente Convention," in the first paragraph, the Delegates in the event of the point arising should make it clear that His Majesty's Government would not be able to support the grant to foreign authors of more extensive rights than those granted or to be granted by English domestic law to British authors under similar circumstances.

To the amendment in paragraph 2 (and Article 1 of the Declaration of the 4th May, 1896) His Majesty's Government see no objection in principle.

The definition of "œuvres publiées" may be accepted, provided a satisfactory

understanding can be arrived at with regard to the position of dramatic works, pictures, &c., thereunder, if doubt as to their position should on discussion appear to exist.

His Majesty's Government see no objection to the addition of "the construction of a work of architecture" among the acts which do not constitute publication.

To the new paragraph which it is proposed to add to the end of the Article His Majesty's Government see no objection.

The Delegates should endeavour to obtain the assent of the Conference to a provision that a work first published in a country of the Union shall not be deemed to lose its Union protection by the fact of its having been simultaneously first published in a non-Union country.

*Article 3.*—No objection.

*Article 4. Œuvres d'Art appliqué à l'Industrie.*—It appears to His Majesty's Government that it would be inadvisable to include such works in the definition, and that it would be preferable to deal with them in a separate Article following the lines of Article 13 of the Acte Additionnel of Paris relating to photographic works.

With regard to the remaining alterations, His Majesty's Government see no objection.

*Article 5.*—To the proposal to grant translating right for the whole term of copyright, though at present contrary to British law, His Majesty's Government see no objection.

*Article 6.*—No objection. It should be borne in mind that the insertion of translations in the list in Article 4 might tend to derogate from the absolute protection now guaranteed to such works.

*Article 7.*—No objection in principle.

*Article 9.*—It is proposed to repeal the requirement that there should be an express reservation of the rights of public performance printed on musical works. This is at present contrary to the English law, and the Delegates should explain the difficulties which gave rise to the English Act of 1882.

*Article 10 and Article 3 of the Declaration of the 4th May, 1896.*—No objection in principle.

*Article 11.*—It is proposed to omit the paragraph giving the Courts power to require a certificate showing that the formalities required in the country of origin have been performed. His Majesty's Government have no objection.

*Article 14.*—No objection; but provision should be made for the equitable protection of vested interests by an Article corresponding to Article 4 of the Final Protocol to the Berne Convention.

*Article 1 (a) of the Protocole de Clôture.*—His Majesty's Government, while seeing no objection in principle to the proposed inclusion of works of architecture within the full sphere of copyright, are disposed to regard the proposal as impracticable; the Delegates, should, however, give careful attention to the arguments advanced in its favour, and, if they think it is practicable, they are authorized to accept it.

*Article 1 (b) of the Protocole de Clôture.*—No objection. The existing English law protects photographs as artistic works.

*Article 2 of the Protocole de Clôture.*—His Majesty's Government see no objection in principle to the grant of copyright to "œuvres chorégraphiques et pantomimes dont l'action dramatique est fixée par écrit." The position of these works under the existing law is very uncertain.

*Article 3 of the Protocole de Clôture.*—It is proposed to make the unlicensed manufacture of gramophone discs, &c., an infringement of copyright, with a provision for a compulsory royalty where such a licence has been issued to anyone. His Majesty's Government see no serious objection to this proposal, which, however, is not in accordance with English law, but would desire that the interest of the Gramophone and similar Companies be protected as far as is consistent with the rights or interests of authors and publishers.

*Article 4 of the Protocole de Clôture.*—No objection.

*French Amendment* (relating to "projections photographiques").—His Majesty's Government see no objection to this proposal, which probably, however, goes to some extent beyond the protection afforded by the existing English law.

The Delegates should bring before the notice of the Conference the desirability of formulating, if possible, an Article prohibiting in general terms the unauthor-



rized reproduction of literary and artistic works by "mechanical" instruments of all kinds.

*Japanese Amendment* (relating to translating right).—His Majesty's Government cannot accept this amendment.

I enclose a form of declaration which you should read at the opening of the Conference in order to make the position of His Majesty's Government clear to the Delegates of the other Powers represented at the meeting.

I am, &c.,  
E. GREY.

#### Declaration.

His Britannic Majesty's Government attach great importance and value to the Convention of Berne and the Additional Act of Paris, and they hope that the result of the present Conference may be a common agreement in regard to amendments which shall be of a nature to perfect the basis of the International Union, and to render the Conventional stipulations more clear, more simple, and more effectual for the protection of the legitimate rights of intellectual property.

In the firm hope that such a common agreement may be arrived at, His Britannic Majesty's Government have instructed the British Delegates to consider and discuss the proposed amendments which may be submitted to the Conference, in order that, if possible, these may be agreed upon in a shape which His Britannic Majesty's Government can eventually adopt.

It is needful, however, to state clearly that there exist for Great Britain very serious difficulties in connection with the subject of copyright, especially as regards harmonizing the interests of the mother country with those of the great self-governing Colonies.

Unless it should be found possible to remove these difficulties, His Majesty's Government would not probably find themselves in a position to propose to Parliament the legislation which would be necessary in order to give effect to any considerable alterations in the Convention of Berne. Therefore it must be stated at the outset that assent by the British Delegates to any amendment or to a revised text of the Convention does not imply that Great Britain will be able eventually to adhere and give effect to such amendment or revised Convention.

At the same time the British Delegates are authorized to declare that, if the results of this Conference should assume a shape which is considered to be satisfactory for Great Britain, His Majesty's Government will not delay to make a serious effort to come to an understanding with the British Colonies on the subject.

If such an effort should prove to be successful, His Britannic Majesty's Government would then hope to be in a position to propose to Parliament a Project of Law designed to enable Great Britain to adhere to the amended Convention.

It must, however, be clearly understood that, until Great Britain has actually adhered to the revised Convention, her relations with the other Contracting States of the Union in regard to copyright will continue to be governed by the Convention of Berne and by the Additional Act of Paris.

42691

No. 20.

#### TRANSVAAL.

THE DEPUTY GOVERNOR to THE SECRETARY OF STATE.

(Received 21st November, 1908.)

(No. 390.)

MY LORD, Governor's Office, Johannesburg, 2nd November, 1908.

WITH reference to your despatch of the 3rd September, No. 270, and telegram of the 14th September, No. 1,\* I have the honour to inform you that the subject of copyright within the Empire is receiving the consideration of my Ministers, who are consulting with the Governments of other South African Colonies relative to the suggestion made.

I have, &c.,  
METHUEN,  
Deputy Governor.

\* Nos. 17 and 18.

45670

No. 21.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 12 December, 1908.)

(No. 276.)

Government House, Pietermaritzburg, Natal,

MY LORD,

16th November, 1908.

REFERRING to your Lordship's despatch, No. 157, dated the 3rd September, 1908,\* enquiring whether Ministers here would be prepared to send a representative to a conference for the discussion, with a view to concurrent legislation if agreement can be arrived at, of certain specific points on which an amendment of the existing Copyright Law is urgently needed, I have the honour to report that Ministers are proposing to the other South African Colonies that these Colonies should be jointly represented at the proposed conference by Sir Richard Solomon, the Agent-General for the Transvaal, and that I shall inform your Lordship in due course if that proposal is accepted.

I have, &c.,  
M. NATHAN.

46649

No. 22.

#### CAPE OF GOOD HOPE.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 21 December, 1908.)

(No. 284.)

Government House, Cape Town, 30th November, 1908.

MY LORD,

I COMMUNICATED to Ministers your Lordship's despatch, No. 185, of the 3rd September,\* on the subject of Imperial Copyright, and received from them the reply of which a copy is enclosed, in which they give their reasons for considering that a conference is not desirable.

2. Before communicating this reply to your Lordship, I thought it advisable to consult the other South African Governments. Your Lordship will see from the enclosed correspondence that the Transvaal are in favour of the conference provided that one representative is appointed for the whole of South Africa, that Natal is of the same opinion, and that no answer has been received from the Orange River Colony.

3. I have now received from my Ministers a further minute, in which they express their disagreement with the Transvaal and adhere to their original opinion.

I have, &c.,  
WALTER HELY-HUTCHINSON.

Enclosure 1 in No. 22.

MINISTERS to GOVERNOR.

(Minute No. 1/455.)

Prime Minister's Office, Cape Town, 13th October, 1908.

Ministers have the honour to acknowledge the receipt of His Excellency the Governor's Minute, No. 684, of the 22nd September, 1908, on the subject of a proposal advanced by the Imperial Government that certain particular points in the existing Copyright Law should be discussed at a conference between its representatives and delegates from the self-governing Dominions concerned.

Ministers beg to forward for His Excellency's perusal copy of a report by the Attorney-General on the Imperial Government's proposal, and to state that they concur in the views expressed by Mr. Burton.

N. F. DE WAAL.

\* No. 16.



Attorney-General's Office, Cape Town, 6th October, 1908.

Copyright in the Empire.

REPORT of the Attorney-General:—

I entirely agree with the view expressed by my predecessors, Messrs. Solomon and Innes, that we cannot do anything to hamper the right of this Colony to legislate upon copyright within its own borders. If the proposed "subsidiary conference" be held to discuss the specific points referred to and an agreement be arrived at as to the form of concurrent legislation on these points within the Dominions, there would still be the possibility—perhaps probability—of the agreed terms being modified by the respective Colonial Parliaments upon submission to them. It is difficult to see how complete uniformity even of these "specific points" can thus be arrived at, by the holding of the conference. I would suggest that substantial uniformity might be attained if the Imperial Government were to frame actual clauses embodying the points upon which reform by means of uniform legislation is thought to be desirable, and each Colonial Government could then consider such clauses with a view to their adoption in local legislation. This method of procedure would obviate the expense of sending a representative to a conference which might, after all, not result in a satisfactory solution of the question.

HENRY BURTON.

Enclosure 2 in No. 22.

#### SCHEDULE.

- (1) Telegrams to Governors Transvaal, Orange River Colony, and Natal. Confidential, of 17th October, 1908.
- (2) Despatch from Deputy-Governor Transvaal, No. 67/2/1908, of 2nd November, 1908.
- (3) Despatch from Governor Natal, No. 260, of 16th November, 1908.

(1)

TELEGRAM.

GOVERNOR TO GOVERNOR [Transvaal], [Orange River Colony], [Natal].

17th October, 1908. Confidential.

What have your Ministers done about the Secretary of State's proposal that certain points in the Copyright Law should be discussed at a subsidiary conference? My despatch from the Secretary of State on the subject is dated 3rd September, 1908.

(2)

(Transvaal. No. 67/2/1908.)

SIR,

Governor's Office, Johannesburg, 2nd November, 1908.

I HAVE the honour to transmit to you, for the consideration of your Ministers, the document specified in the annexed schedule on the subject of copyright in the Empire.

Copies of this minute have been distributed as indicated therein.

I have, &c.,

METHUEN,

Deputy Governor.

His Excellency

The Administrator of the Cape Colony,  
Cape Town.

| Date.              | Description of Document.       |
|--------------------|--------------------------------|
| 27th October, 1908 | Minute No. 627 from Ministers. |

(Minute No. 627.)

Prime Minister's Office, Pretoria, 27th October, 1908.

Ministers have the honour to acknowledge the receipt of His Excellency's Minute, No. 67/2/1908 of 24th September, enclosing copy of a despatch from the Secretary of State for the Colonies with reference to the subject of copyright in the Empire.

2. Ministers note that no particular period is suggested at which the proposed subsidiary conference should be held. They are of opinion, however, that there is not sufficient diversity between the interests of this Colony and of the other South African Colonies in the proposed amendment of the Copyright Law of the Imperial Parliament to justify the appointment of a special representative for this Colony at the proposed conference.

3. Ministers would therefore suggest that the Governments of Cape Colony, Natal, and the Orange River Colony, which presumably have received despatches similar to that referred to above, should be approached with a view to its being ascertained whether each of those Governments propose to select a representative at the conference, and if so whether it will consider the advisability of a joint representative of all the South African Colonies being selected to proceed to Ottawa or any other place at which the conference is held.

4. Ministers have the honour to recommend that the Secretary of State be informed that the matter is receiving the consideration of Ministers, who are consulting with the Governments of other South African Colonies relative to the suggestion contained in his despatch.

JACOB DE VILLIERS.

(3)

(Natal. No. 260.)

Government House, Pietermaritzburg, Natal.

16th November, 1908.

SIR,

I HAVE the honour to transmit, for Your Excellency's information, with reference to Despatch No. 67/2 of the 2nd November, 1908, the document specified in the annexed schedule.

Copies of the document have been distributed as indicated therein.

I have, &c.,

M. NATHAN.

His Excellency

The Governor of the Cape Colony,

&c., &c., &c.,

Cape Town.

| Date.               | Description of Document.   |
|---------------------|--|
| 13th November, 1908 | Minute No. 13/1908 from Ministers. Proposal that Sir Richard Solomon should represent South Africa at the proposed Copyright Conference. |

(Minute No. 13, 1908.)

Prime Minister's Office, Natal, 13th November, 1908.

Ministers have had under consideration the Secretary of State's despatch, No. 157 of the 3rd September, with reference to the subject of copyright within the Empire, and they concur in the proposal made by Your Excellency that arrangements should be made for Natal and the other South African Colonies to be jointly



represented at the proposed conference. For this purpose they beg to suggest the name of Sir Richard Solomon, the Agent-General for the Transvaal in London, as a most suitable person to represent the interests of South Africa on this occasion.

I shall feel obliged if Your Excellency will transmit copies of this minute to the Governors of the Cape Colony, Transvaal, and Orange River Colony.

C. O'GRADY GUBBINS,  
(for Prime Minister).

Enclosure 3 in No. 22.

(Minute No. 1/493.)

Prime Minister's Office, Cape Town, 18th November, 1908.

Ministers have the honour to acknowledge the receipt of His Excellency the Governor's Minute, No. 781 of the 6th November, 1908, which enclosed copy of a Transvaal Minute on the subject of copyright in the Empire, giving the views of the Government of the Transvaal on the proposal advanced by the Secretary of State for the Colonies that an attempt should be made, at a conference, meeting at some date and place not yet decided upon, to reconcile differences in the existing Copyright Law with a view to subsequent concurrent legislation.

Ministers beg to inform His Excellency, with reference to the suggestion put forward by Transvaal Ministers that the South African Governments might perhaps unite in sending a representative to the conference proposed by the Imperial Government, that they have considered this suggestion, but would prefer to adhere to the view expressed in the Minute they addressed to His Excellency on the 13th October, 1908, No. 1/455, when making their reply to the Secretary of State's despatch, No. 185 of the 3rd September.

In that Minute Ministers stated their opinion that "substantial uniformity might be attained if the Imperial Government were to frame actual clauses embodying the points upon which reform by means of uniform legislation is thought to be desirable, and each Colonial Government could then consider such clauses with a view to their adoption in local legislation." It was added that "this method of procedure would obviate the expense of sending a representative to a conference which might, after all, not result in a satisfactory solution of the question."

Ministers enclose a sufficient number of copies of their present communication for distribution among the South African Governments concerned.

JOHN X. MERRIMAN.

47946

No. 23.

NEW ZEALAND.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 31 December, 1908.)

(No. 87.)

MY LORD, Government House, Wellington, 23rd November, 1908.  
I HAVE the honour to acknowledge your Lordship's despatch, No. 149, of the 3rd September last,\* and your telegram of the 14th of that month,† on the subject of copyright legislation.

2. With reference to the last paragraph of your despatch, my Ministers inform me that, in the event of such a Conference as is mentioned being held, the Government of this Dominion would be prepared to send a representative.

I have, &c.,  
PLUNKET,  
Governor

\* No. 16.

† No. 18.

46848

No. 24.

THE SECRETARY OF STATE to THE GOVERNORS-GENERAL AND GOVERNORS.

- |                    |                           |
|--------------------|---------------------------|
| (1. Canada.)       | (5. Cape of Good Hope.)   |
| (2. Newfoundland.) | (6. Natal.)               |
| (3. Australia.)    | (7. Transvaal.)           |
| (4. New Zealand.)  | (8. Orange River Colony.) |
| (Confidential.)    |                           |

MY LORD,  
SIR.

Downing Street, 2 January, 1909.

WITH reference to my despatch, Confidential, of the 23rd of October last,\* I have the honour to transmit to [Your Excellency] [you], to be laid before your Ministers, the accompanying copies of the text† of the Copyright Convention signed at Berlin on the 18th of November.

2. I propose in due course to forward to you full reports of the proceedings of the Conference, which are to be published as a Parliamentary Paper, but in the meantime I have thought it desirable to communicate the text to your Government [(1, 2, 3, and 8) in order that they may take it into account in deciding upon the proposal contained in my despatch, No. [(542), (132), of the 3rd of September,‡] [(306),‡ (108), of the 2nd of September,§] for the holding of a subsidiary Conference between the representatives of the self-governing Dominions and of His Majesty's Government to discuss questions respecting Copyright. I take this opportunity of stating that I should be glad to receive a reply to that despatch at the earliest possible date].

3. Your Ministers will observe from the enclosures to this despatch that the ratification of the Convention, if it is decided that His Majesty's Government should ratify it, must be deposited not later than the 1st of July, 1910.

4. I may add that His Majesty's Government are about to appoint a Committee to examine the revised Convention in relation to the existing Copyright Law, and it is hoped that their report will form a useful basis for the discussion in the Conference.

I have, &c.,  
CREWE.

2842

No. 25.

CAPE OF GOOD HOPE.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 25 January, 1909.)

(No. 3.)

MY LORD, Government House, Cape Town, 5th January, 1909.  
I HAVE the honour to transmit to your Lordship, in continuation of my despatch, No. 284, of 30th November, 1908,|| copy of a despatch, No. 344/1, from the Administrator of the Orange River Colony, on the subject of Imperial Copyright.

I have, &c.,  
WALTER HELY-HUTCHINSON.

\* No. 19.

† In [Cd. 4467] February, 1909.

‡ No. 16.

§ No. 17.

| No. 22.



Enclosure in No. 25.

(Orange River Colony. No. 344/1.)

SIR, Governor's Office, Bloemfontein, 29th December, 1908.  
I HAVE the honour to transmit to Your Excellency, with reference to your despatch, No. 363, of the 9th ultimo, the document specified in the annexed schedule.

I have, &c.,  
R. B. ALLASON,  
Administrator.

His Excellency  
The Governor of the  
Cape Colony, Cape Town.

| Date.               | Description of Document.  |
|---------------------|---|
|                     | <i>Copyright within the Empire.</i>   |
| 28th December, 1908 | Minute No. 1377 from Ministers.<br>(Copies of this document have been transmitted to the Governors of the Transvaal and Natal.) |

(Minute. No. 1377.)

Prime Minister's Office, Bloemfontein,  
Orange River Colony, 28th December, 1908.

Ministers have the honour to acknowledge the receipt of Minutes No. 344/1, of the 14th and 30th ultimo, enclosing copies of telegraphic correspondence and Minutes by Transvaal and Cape Colony Ministers, regarding the proposed conference on the subject of copyright within the Empire.

Ministers desire to state that they do not consider that the interests of this Colony are sufficiently concerned to warrant incurring the expense of taking part in a conference of this nature. In the event, however, of the other South African Colonies deciding to send a joint representative, Ministers would be prepared to take the matter into consideration, but are of opinion that considerable weight should attach to the views expressed by Cape Ministers in their Minute of the 18th ultimo.

Ministers regret that, on account of the absence of Ministers, there should have been some delay in replying to His Excellency's Minute quoted above.

A. FISCHER.

4343

No. 26.

AUSTRALIA.

THE GOVERNOR-GENERAL TO THE SECRETARY OF STATE.

(Received 6 February, 1909.)

[Copy to Governor-General of Canada (No. 98), and to Governor of Newfoundland (No. 25), 18 February, 1909. L.F.]

(No. 321.)

Governor-General's Office,  
Melbourne, 31st December, 1908.

MY LORD, REFERRING to your Lordship's despatch, No. 306, dated 2nd September last,\* relative to the proposals of the Board of Trade for the enactment of Imperial legislation dealing comprehensively with copyright in the Empire, I have the honour to forward, herewith, copies of memoranda on the subject, prepared by the Federal Attorney-General and the Registrar of Copyrights.

2. His Majesty's Ministers of the Commonwealth have informed me, for your Lordship's information, that Lord Tennyson will represent the Commonwealth at the proposed conference, and instructions are being issued to his Lordship in accordance with the memoranda referred to above. A number of copies of the

\* No. 16.

Commonwealth Copyright Act are also being forwarded to Lord Tennyson, for distribution amongst members of the Conference.

I have, &c.,  
DUDLEY,  
Governor-General.

Enclosure 1 in No. 26.

# MEMORANDUM OF EXPLANATION OF THE COMMONWEALTH COPYRIGHT ACT, 1905.

The position of the law as regards copyright in Australia at the time of the passing of the Commonwealth Copyright Act was somewhat complicated.

The Imperial Copyright Acts applied as regards literary works first published in Great Britain or in any British Possession or in any foreign country being an adherent to the Berne Convention.

Most, if not all, of the States had Copyright Acts in force, but the State Copyright Acts of one State applied only in relation to works first produced in that State and not to works produced in another State, the latter being regarded as a foreign country. Therefore works produced in one State would enjoy protection in that State under the State law and would enjoy protection in other States by virtue of the Imperial Copyright Acts.

It may be said, therefore, that before the passing of the Commonwealth Act there were six separate copyright areas in existence in Australia, in each of which two separate and independent systems of copyright law were in force, viz., the Imperial Copyright Acts and the State Copyright Acts.

The Commonwealth Act could, and did, succeed in creating one copyright area in Australia in place of the six copyright areas previously existing, and in substituting one system of Commonwealth law in place of the six systems of State law. But it could not get rid entirely of the State laws, as there were many copyrights in existence which had many years to run before falling in, and it could not get rid at all of the Imperial Copyright Acts.

Consequently the Commonwealth Act was so framed—

- (a) that the State systems of law remained in force as regards copyrights existing under those systems;
- (b) that copyrights existing or coming into existence by virtue of the Imperial Copyright Acts were not interfered with; and
- (c) that copyright under the Act was only granted in the case of works first published or produced in Australia.

Copyright in works produced outside Australia continues to subsist in Australia to the same extent and subject to the same conditions as it did before the Commonwealth Copyright Act was passed, and owners of copyright in those works have exactly the same rights and remedies as they would have had if the Act had never been passed.

But the Commonwealth Parliament, although it could not take away or diminish the rights enjoyed in Australia under the Imperial Copyright Acts, could grant additional rights to the owners of the first-mentioned rights.

The Commonwealth Act contained some special remedies which could be simply and expeditiously followed in the case of small infringements of copyright and performing right, and it was thought that these remedies would prove to be exceedingly valuable to all owners of copyrights and performing rights, especially in the case of popular songs and popular musical and dramatical works. Provision was therefore made in the Act by which the owners of any copyright or performing right existing in Australia by virtue of the Imperial Copyright Acts or by virtue of the State Acts could register under the Commonwealth Act and so obtain a right to the special remedies.

This grant was clearly a concession, and no owner need register under the Act unless he chooses to do so. He suffers no disadvantage by not registering—he has still all the rights and remedies given him by the Imperial Copyright Acts or by the State Copyright Acts. But if he wants the additional rights under the Commonwealth Act he can come in and get them by registering under its provisions, and to enable an owner to pursue the special remedies registration is a very essential requirement because it would not be safe to allow some, at least, of the special remedies unless ownership of the copyright or performing right could promptly and officially be verified.



The position now that the Commonwealth Copyright Act has been passed may be summed up as follows:—

- (a) Literary and artistic works first published or produced in Australia are protected in Australia by the Commonwealth Act.
- (b) Literary and artistic works published or produced in a State before the commencement of the Commonwealth Copyright Act are protected in that State by the State Copyright Act and are protected (as far as literary works are concerned) in other States by the Imperial Copyright Acts.
- (c) Literary (and artistic works) produced outside Australia are protected in Australia by the Imperial Copyright Acts; and
- (d) The owners of copyrights and performing rights protected in Australia by a State Copyright Act or by the Imperial Copyright Acts can come in and obtain the protection of the Commonwealth Copyright Act so far as remedies for infringement are concerned.

Enclosure 2 in No. 26.

COMMONWEALTH OF AUSTRALIA.

(2420/08.)

Attorney-General.

MINUTE PAPER.

(Trade and Customs. No. 08/15367.)

Subject: Copyright Conference in London—Instructions to Commonwealth Representative.

MEMORANDUM by the ATTORNEY-GENERAL.

A Copyright Conference is to be held in London, and Lord Tennyson is to represent the Commonwealth at the Conference.

The Minister for Customs asks for advice as to the particular matters to which Lord Tennyson should be directed.

A Commonwealth Copyright Act was passed in 1905. This Act is in advance of the legislation of the United Kingdom on the subject and embodies many of the reforms suggested for consideration at the Conference.

With regard to literary copyright, the Commonwealth Act deals with all matters to be discussed at the Conference except—

- (a) the extension of the term of copyright to 30 years (or possibly 50 years) after the end of the year of the author's death;
- (b) the extension of the scope of copyright to include mechanical records of musical works; and
- (c) some of the suggested minor amendments.

With regard to artistic copyright, the Commonwealth Act deals with all the matters suggested except the anomaly arising from the decision in the case of *Graves v. Gorrie* (1903), A.C. 496. A Bill has already been drafted to remove the anomaly referred to, by providing for the enjoyment of copyright in Australia in respect of works of art produced in Great Britain and in British Possessions and foreign countries which make reciprocal provision in the case of works of art produced in Australia.

It is therefore only necessary to deal specifically with the matters (a), (b), and (c) in connection with the subject of literary copyright.

(a) *Extension of the Term of Copyright.*

The Bill on which the Commonwealth Act is founded provided, when introduced into Parliament, that copyright should subsist for the life of the author and for thirty years after the end of the year of the author's death. During the passage of the Bill through Parliament, the extended term met with considerable opposition, and the Bill was amended by making the term the same as the term under the law in Great Britain. The Commonwealth Parliament in 1905 was therefore not in favour of the extension, and there has been nothing to indicate a change of opinion since. The number of works published, the authors of which would be benefited

by the extended term, is small in Great Britain and is probably nil in Australia. Consequently, the matter is of greater relative importance in Great Britain than it is in Australia. I think, therefore, that Lord Tennyson should be instructed not to favour the extended term on the part of Australia.

(b) *Extension of Scope of Copyright to include Mechanical Records of Musical Works.*

I think such an extension is desirable, and that Lord Tennyson should be instructed to favour it on the part of Australia.

(c) *Minor Amendments.*

The nature of the minor amendments to be considered is not indicated. It is, therefore, impossible to say what instructions should be given concerning them. No amendments of the Commonwealth Act in relation to any of the matters mentioned in this connection have been brought under my notice as being desirable.

I would suggest that, in addition to any instructions, Lord Tennyson be provided with a sufficient number of copies of the Commonwealth Copyright Act for distribution to members of the Conference, together with a short explanatory memorandum.

W. M. HUGHES,  
Attorney-General.

10 December, 1908.

4400

No. 27.

TRANSVAAL.

THE DEPUTY GOVERNOR to THE SECRETARY OF STATE.

(Received 6 February, 1909.)

(No. 19.)

MY LORD, Governor's Office, Johannesburg, 18th January, 1909.  
WITH reference to my despatch of the 2nd November, 1908, No. 390,\* I have the honour to enclose, for your consideration, copy of a Minute from Ministers, No. 29, of the 15th January, 1909, on the subject of Copyright in the Empire.

I have, &c.,  
METHUEN,  
Deputy-Governor.

Enclosure in No. 27.

(Minute. No. 29.)

Prime Minister's Office, Pretoria, 15 January, 1909.

Ministers have the honour to refer His Excellency the Deputy-Governor to their Minute, No. 627, of the 27th October, 1908, on the subject of a despatch from the Right Honourable the Secretary of State for the Colonies with regard to Copyright in the Empire.

2. Ministers recognise the importance of an attempt being made to arrive at an agreement on objections raised by certain Colonies to the Copyright Bills which apply to or affect British Colonies.

3. Whilst recognising that the subject-matter of those Bills is of some little importance to the Transvaal, Ministers incline to the same opinion as that held by the Ministers of the Cape Colony, viz., that its difficulties can be more satisfactorily met by the Imperial Government framing and submitting to the several Governments clauses in which would be embodied the points upon which reform by means of uniform legislation is thought desirable. In the event, however, of that course being considered by His Majesty's Government less desirable than the proposal contained in the despatch of the Right Honourable the Secretary of State, Ministers would be prepared to approach the Governments of other South African Colonies with a view to a joint representative being appointed for the Conference.

\* No. 20.



4. Ministers regret that delay should have occurred in replying to the despatch of the Secretary of State, but having regard to the objects for which the National Convention has been sitting, Ministers were anxious to obtain the views—of which they are now in possession—of the other Governments of South African Colonies.

JACOB DE VILLIERS.

6354

No. 28.

ORANGE RIVER COLONY.

THE GOVERNOR TO THE SECRETARY OF STATE.

(Received 20 February, 1909.)

(No. 15.)

MY LORD,

Governor's Office, Bloemfontein, 1 February, 1909.

WITH reference to your Lordship's despatch, No. 108, of the 3rd of September last,\* relative to the proposed Conference on the subject of copyright within the Empire, I have the honour to inform you that my Ministers do not consider that the interests of this Colony are sufficiently concerned to warrant incurring the expense of taking part in a Conference of this nature. In the event, however, of the other South African Colonies deciding to send a joint representative, Ministers would be prepared to take the matter into consideration, but they are of opinion that considerable weight should be attached to the views expressed by Cape Ministers in their Minute, No. 1/493, of the 18th November,† a copy of which has doubtless been transmitted to your Lordship by the Governor of the Cape Colony.

I have, &c.,

H. GOOLD-ADAMS,

Governor.

9006

No. 29.

CANADA.

THE SECRETARY OF STATE TO THE GOVERNOR-GENERAL.

[Answered by No. 31.]

(No. 353.)

MY LORD,

Downing Street, 26 May, 1909.

I HAVE the honour to request that Your Excellency will be so good as to invite the attention of your Ministers to my despatch, No. 542, of the 3rd of September,‡ on the subject of a proposed subsidiary conference on the question of copyright.

2. I have to inform you that the Government of the Commonwealth of Australia have appointed Lord Tennyson to be their representative at the conference, and that the Government of New Zealand have expressed their readiness to send a representative to such a conference.

I have, &c.,

CREWE.

21816

No. 30.

NEWFOUNDLAND.

THE GOVERNOR TO THE SECRETARY OF STATE.

(Received 1 July, 1909.)

(No. 54.)

MY LORD,

Government House, St. John's, 22 June, 1909.

REFERRING to your despatch, No. 132, of date September 3rd, 1908,‡ having reference to the Copyright Convention, I have the honour to transmit herewith

\* No. 17.

† Enclosure 3 in No. 22.

‡ No. 16.

copy of a letter from the Colonial Secretary covering copy of a report by the Attorney-General on the subject, dated 31st March.

I have, &c.,

WM. MACGREGOR.

Enclosure in No. 30.

SIR,

Colonial Secretary's Office, St. John's, Newfoundland, June 14, 1909.

REFERRING to Your Excellency's favour of the 8th instant, addressed to the Honourable the Prime Minister, covering despatch, No. 78, of 17th May, from the Right Honourable the Secretary of State for the Colonies, in reference to the Copyright Convention, I have the honour to forward herewith copy of report upon this matter, of date 31st March last, from the Minister of Justice, which was considered at the meeting of the Committee of Council last evening. I beg to intimate that Ministers concurred in the suggestion of Mr. Morison, and a minute approving the sending of a competent person to represent Newfoundland at the Conference will be submitted in due course for approval by Your Excellency.

I have, &c.,

R. WATSON,

Colonial Secretary.

His Excellency

Sir Wm. MacGregor, G.C.M.G., C.B.,  
&c., &c.

Attorney-General's Office,

SIR,

St. John's, Newfoundland, 31st March, 1909.

I HAVE the honour to acknowledge receipt of your letter of the 19th, enclosing copy of Confidential despatch, dated January 2nd last, having reference to the Copyright Convention. I have also had under consideration despatch No. 132, dated September 3rd, 1908, forwarded by His Excellency the Governor to the late Prime Minister and the enclosure contained therein.

From these documents it appears that the Board of Trade has come to the conclusion that there is no prospect, in the immediate future, of there being such a general agreement between His Majesty's Government and the self-governing Dominions of the Crown as may result in the enactment of an Imperial Act dealing comprehensively with copyright in the Empire. His Majesty's Government have decided, therefore, to abandon for the present the proposed legislation dealing with this subject.

I have considered the list of suggested amendments upon specific points contained in despatch of September 3rd, 1908, and think that a discussion of them by a subsidiary conference, with a view to concurrent legislation, if an agreement can be arrived at, may assist in clearing away some of the difficulties which surround this vexed question.

Should such a conference be arranged I would advise the Government to give favourable consideration to the suggestion to send a competent person to represent Newfoundland at the Conference.

I have, &c.,

D. MORISON,

Acting Attorney-General.

A. Mews, Esq.,

Deputy Colonial Secretary.

22997

No. 31.

CANADA.

THE ACTING GOVERNOR-GENERAL TO THE SECRETARY OF STATE.

(Received 10 July, 1909.)

[Answered by No. 36.]

(No. 320.)

MY LORD,

Ottawa, 28th June, 1909.

WITH reference to your Lordship's despatch of the 26th May, 1909, No. 353,



and to my telegram of the 21st instant,\* regarding the proposal to hold a subsidiary conference to discuss questions respecting copyright in the Empire, I have the honour to transmit, for your Lordship's information, an approved copy of a Minute of the Privy Council for Canada, which formed the basis of my telegram.

I have, &c.,  
C. FITZPATRICK,  
Administrator.

#### Enclosure in No. 31.

CERTIFIED COPY of a Report of the Committee of the Privy Council, approved by His Excellency the Administrator on the 21st June, 1909.

The Committee of the Privy Council have had under consideration despatches, dated, respectively, 3rd September, 1908, 14th September, 1908, 18th February, 1909, 12th May, 1909, and 26th May, 1909, from the Right Honourable the Principal Secretary of State for the Colonies, on the subject of the enactment of an Imperial Act dealing comprehensively with Copyright in the Empire and of the proposal for the holding of a subsidiary conference between the representatives of the self-governing Dominions and of His Majesty's Government to discuss questions respecting Copyright with a view to concurrent legislation.

The Minister of Agriculture, to whom the despatches were referred, states that, in his opinion, it is advisable, desirable, and in the interest of Canada, that the Dominion should be represented at the proposed Copyright Conference, and that a representative should be sent to meet the representatives of the Commonwealth of Australia and of the Dominion of New Zealand, the Governments of both countries having expressed their readiness to send representatives to the proposed Conference.

The Committee, on the recommendation of the Minister of Agriculture, advise that Your Excellency may be pleased to cable an answer in the sense of this Minute to the Right Honourable the Principal Secretary of State for the Colonies.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,  
Clerk of the Privy Council.

28730

#### No. 32.

#### THE SECRETARY OF STATE to THE GOVERNORS-GENERAL AND GOVERNORS.

- |                               |                                      |
|-------------------------------|--------------------------------------|
| (1.) (Canada. No. 584.)       | (5.) (Cape of Good Hope. No. 264.)   |
| (2.) (Newfoundland. No. 144.) | (6.) (Natal. No. 188.)               |
| (3.) (Australia. No. 343.)    | (7.) (Transvaal. No. 303.)           |
| (4.) (New Zealand. No. 180.)  | (8.) (Orange River Colony. No. 161.) |

MY LORD,  
SIR,

Downing Street, 24th September, 1909.

WITH reference to [(1) Sir C. Fitzpatrick's despatch, No. 320, of the 28th June], [(2) Sir W. MacGregor's despatch, No. 54, of the 22nd of June], [(3) Your despatch, No. 321, of the 31st of December last], [(4) your despatch, No. 87, of the 23rd of November last], [(5) your despatch, No. 3, of the 5th of January], [(6) Sir M. Nathan's despatch, No. 276, of the 16th of November last], [(7) your despatch, No. 19, of the 18th of January], [(8) your despatch, No. 15, of the 1st of February].† I have the honour to request you to inform your Ministers that His Majesty's Government would suggest that it would be most convenient for the proposed subsidiary conference on copyright to meet in London early in the spring of next year, say, in March or April next. If your Ministers concur in this proposal, the exact date of assembling can be arranged by telegraph later.

\* No. 29; and 21012: not printed.

† Nos. 21, 23, 25 to 28, 30 and 31.

2. [To Canada, Newfoundland, and New Zealand.] I shall be glad to be informed in due course of the name of the representative whom your Government desire to send to the proposed Conference.

2. [To South African Colonies only.] I regret that it has not been found practicable to defer the meeting of the Conference until after the Union of the four South African Colonies has been accomplished. But I would suggest that your Government should, in consultation with the other Governments, appoint a representative to watch over the interests of British South Africa. Such a delegate cannot, of course, pledge in any way the future Union Government, but it may be hoped that his presence and advice may assist in the formulation of proposals which that Government may be able to accept when they are submitted to them later.

3. Copies of the replies\* which have been received from the Governments of the various self-governing Dominions to my despatches of the 2nd and 3rd of September† proposing a subsidiary conference are enclosed for the information of your Ministers.

I have, &c.,  
CREWE.

#### SCHEDULE OF ENCLOSURES.

1. Officer Administering the Government of Canada, No. 320, 28th June.
2. Governor, Newfoundland, No. 54, 22nd June.
3. Governor-General, Australia, No. 321, 31st December, 1908.
4. Governor, New Zealand, No. 87, 23rd November, 1908.
5. Governor, Cape, No. 284, 30th November, 1908.
6. Governor of Cape, No. 3, 5th January.
7. Governor, Natal, No. 276, 16th November, 1908.
8. Officer Administering the Government of the Transvaal, No. 390, 2nd November, 1908.
9. Officer Administering the Government of the Transvaal, No. 19, 18th January.
10. Governor, Orange River Colony, No. 15, 1st February.

34183

#### No. 33.

#### NEWFOUNDLAND.

#### THE GOVERNOR to THE SECRETARY OF STATE.

(Received 18 October, 1909.)

(No. 96.)

MY LORD,  
Government House, St. John's, 7th October, 1909.  
WITH reference to your despatch, No. 144, of the 24th September, 1909,† on the subject of copyright, I have the honour to inform your Lordship that my Ministers have no objection to the time suggested for the subsidiary Conference. The latter days of April would probably be most convenient for a representative from this Colony to attend the Conference, the name of whom will be submitted to your Lordship in due course.

I have, &c.,  
RALPH WILLIAMS.

38197

#### No. 34.

#### SOUTH AFRICA.

#### THE AGENT-GENERAL FOR THE TRANSVAAL to COLONIAL OFFICE.

(Received November 24, 1909.)

[Answered by No. 35.]

SIR,  
72, Victoria Street, Westminster, S.W., 23 November, 1909.  
I HAVE the honour to inform you that the Governments of the Cape Colony.

\* Nos. 20 to 23, 25 to 28, 30 and 31.

† Nos. 16 and 17.

‡ No. 32.



Transvaal, Natal, and Orange River Colony have agreed that I should be the representative appointed to watch over the interests of British South Africa at the subsidiary Conference on copyright to meet in London about March or April, 1910.

I understand that a despatch has been addressed to the Secretary of State for the Colonies informing him of my appointment.

I have, &c.,  
RICHARD SOLOMON.

38197

No. 35.

SOUTH AFRICA.

COLONIAL OFFICE to THE AGENT-GENERAL FOR THE TRANSVAAL

Sir,

Downing Street, 8 December, 1909.

I AM directed by the Earl of Crewe to acknowledge the receipt of your letter of the 23rd November,\* reporting that you have been appointed to watch over the interests of British South Africa at the forthcoming subsidiary Conference on copyright.

I am to state that Lord Crewe has been duly notified of your appointment by the Governors of the Cape Colony, Natal, the Transvaal, and the Orange River Colony.

I am, &c.,  
H. W. JUST.

41295

No. 36.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(No. 752.)

My Lord,

Downing Street, 23 December, 1909.

WITH reference to the Acting Governor-General's despatch, No. 320, of the 28th of June,† and to previous correspondence relating to the proposal to hold a subsidiary Conference between representatives of the self-governing Dominions and of His Majesty's Government on the subject of copyright, I have the honour to transmit to you, for the information of your Ministers, the accompanying Report‡ of the Committee appointed to examine how far the law of the United Kingdom would appear to require to be altered so as to enable His Majesty's Government to give effect to the Revised International Copyright Convention, signed at Berlin on November 13, 1908.

The appendix to the report will be transmitted at a later date, when it is published.

I have, &c.,  
CREWE.

41295

No. 37.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL AND GOVERNORS.

- |                                    |                                      |
|------------------------------------|--------------------------------------|
| [(1.) Australia. No. 456.]         | [(5.) Natal. No. 237.]               |
| [(2.) New Zealand. No. 226.]       | [(6.) Transvaal. No. 393.]           |
| [(3.) Newfoundland. No. 203.]      | [(7.) Orange River Colony. No. 203.] |
| [(4.) Cape of Good Hope. No. 329.] |                                      |

My Lord,  
Sir,

Downing Street, 24 December, 1909.

WITH reference to [(1 and 2) my] [your] despatch, No. [(1) 343, of the 24th

\* No. 34.

† No. 31.

‡ [Cd. 4976].

of September\*), [(2) 180, of the 24th of September\*), [(3) 96, of the 7th of October†], [(4) 250, of the 28th of October‡], [(5) 179, of the 25th of October‡], [(6) 354, of the 8th of November‡], [(7) 172, of the 1st of November‡], I have the honour to transmit to [your Excellency] [you], for the information of your Ministers, copies of the Report§ of the Committee appointed to consider in what respects it would be necessary to amend the existing Law of Copyright in this country so as to enable His Majesty's Government to give effect to the revised International Copyright Convention signed at Berlin on the 13th of November, 1908.

2. The Appendices to the Report will be forwarded as soon as they have been issued.

I have, &c.,  
CREWE.

41620

No. 38.

AUSTRALIA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 27 December, 1909.)

(No. 271.)

My Lord,

Governor-General's Office, Melbourne, 18th November, 1909.

REFERRING to your Lordship's despatch, No. 343, dated 24th September last,\* respecting the proposed subsidiary Conference on Copyright, to be held in London next year, I have the honour to inform your Lordship that I am advised by His Majesty's Prime Minister of the Commonwealth that the Government concurs in the Conference being held at the time suggested and proposes to ask Lord Tennyson to represent the Commonwealth thereat.

I have, &c.,  
DUDLEY,  
Governor-General.

1243

No. 39.

NEW ZEALAND.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 7.55 a.m., 11th January, 1910.)

TELEGRAM.

Your despatch 24th September, No. 180,\* subsidiary Copyright Conference. High Commissioner for New Zealand appointed to represent New Zealand, but if unable to attend officer of his department will be appointed. March or April would be convenient.—PLUNKET.

1243

No. 40.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Sent 4.40 p.m., 17 January, 1910.)

TELEGRAM.

[Answered by No. 42.]

Your despatch, No. 320, 28 June.‡ It is proposed that subsidiary conference on copyright should meet on 11 April in London. Australia will be represented by Lord Tennyson, New Zealand by High Commissioner, South African Colonies by Sir Richard Solomon. Shall be glad to learn that your Government agree to date and to receive name of their representative.—CREWE.

\* No. 32.

† No. 33.

‡ 37964, 38000, 38559, 37956: not printed (reporting Sir R. Solomon's appointment) see No. 34.

§ [Cd. 4976.]

[ No. 31.]



41295

No. 41.

## THE SECRETARY OF STATE to THE GOVERNORS-GENERAL AND GOVERNORS.

|                 |                        |
|-----------------|------------------------|
| (Canada.)       | (Cape.)                |
| (Newfoundland.) | (Transvaal.)           |
| (Australia.)    | (Natal.)               |
| (New Zealand.)  | (Orange River Colony.) |
| (Confidential.) |                        |

MY LORD,  
SIR,

Downing Street, 4 February, 1910.

WITH reference to my despatch, No. [752, of the 23rd of December,\*] [203] [456] [226] [329] [393] [237] [203], of the 24th of December,† I have the honour to transmit to [Your Excellency] [you], for the information of your Ministers, proof copies of the Minutes of Evidence‡ taken before the Law of Copyright Committee.

2. These Minutes have not yet been published in this country, but as soon as publication takes place further copies will be sent to you.

I have, &c.,  
CREWE.

4384

No. 42.

CANADA.

## THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 14 February, 1910.)

(No. 50.)

MY LORD,

Government House, Ottawa, 2 February, 1910.

WITH reference to your Lordship's telegram of the 17th January, 1910,§ regarding the proposed subsidiary conference on copyright, to be held in London in April, 1910, I have the honour to forward herewith for your Lordship's consideration copy of an approved minute of His Majesty's Privy Council for Canada, upon which my telegram of the 2nd instant|| was based.

Your Lordship will observe that it is proposed that the Minister of Agriculture shall represent Canada at this Conference, on this subject, to which my responsible advisers attach the greatest importance, but as Mr. Fisher's parliamentary duties will keep him in Ottawa till the end of April, it is hoped that possibly the meetings of the Conference may be postponed till the middle of May.

I have, &c.,  
GREY.

Enclosure in No. 42.

CERTIFIED COPY of a Report of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 31st January, 1910.

(P. C. 164.)

The Committee of the Privy Council have had under consideration a report, dated 25th January, 1910, from the Secretary of State for External Affairs, to whom was referred a despatch, dated 17th January, 1910, from the Right Honourable the Principal Secretary of State for the Colonies on the subject of the proposed subsidiary Conference on Copyright, to be held in London in April, 1910.

The Secretary of State for External Affairs represents that the Canadian Government deem this matter of such importance that they desire the Dominion should be represented by the Minister of Agriculture, who has charge of, and is familiar with, the subject.

\* No. 36. † No. 37. ‡ [Cd. 5051]. § No. 40. || 3485: not printed.

The Minister observes that Mr. Fisher's parliamentary duties in Ottawa will, however, prevent him from being in London until about a month later than the suggested date. Your Excellency's advisers would be glad to know whether, in the circumstances, the meetings of this Conference could be postponed until the middle of May.

The Committee, therefore, recommend that Your Excellency may be pleased to cause an enquiry in this sense to be addressed to the Right Honourable the Principal Secretary of State for the Colonies by cable.

All which is respectfully submitted for approval.

F. K. BENNETTS,  
Assistant Clerk of the Privy Council.

5232

No. 43.

NEWFOUNDLAND.

## THE GOVERNOR to THE SECRETARY OF STATE.

(Received 7.35 p.m., 19th February, 1910.)

TELEGRAM.

Your telegram, 2nd February.\* Copyright Conference. My Ministers do not desire to be represented.—WILLIAMS.

6986

No. 44.

## THE SECRETARY OF STATE to THE GOVERNORS-GENERAL AND GOVERNORS.

|                          |                            |
|--------------------------|----------------------------|
| (Newfoundland. 36.)      | (Natal. 68.)               |
| (Australia. 94.)         | (Transvaal. 52.)           |
| (New Zealand. 47.)       | (Orange River Colony. 31.) |
| (Cape of Good Hope. 51.) | (Canada. 179.)             |

MY LORD,  
SIR,

Downing Street, 11 March, 1910.

WITH reference to my despatch, No. [203] [456] [226] [329] [237] [393] [203], of the 23rd of December,† [752], of the 24th of December,‡ I have the honour to transmit to [Your Excellency] [you], for the information of your Ministers, copies of the Minutes of Evidence§ taken before the Law of Copyright Committee.

I have, &c.,  
CREWE.

7579

No. 45.

AUSTRALIA.

## THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 14 March, 1910.)

(No. 46.)

MY LORD,

Governor-General's Office, Melbourne, 4th February, 1910.

REFERRING to your Lordship's despatch, No. 343, dated 24th September, 1909,|| regarding the subsidiary Conference on Copyright, which it is proposed to hold in London shortly, I have the honour to transmit herewith, in connection with any projects which may be in hand for the revision of the Imperial law, a copy of a memorandum which has been prepared by the Commonwealth Attorney-General, respecting the Imperial copyright, and which represents the views of the Commonwealth Government upon this subject.

\* 2814: not printed. † No. 37. ‡ No. 36. § [Cd. 5051]. || No. 32.



2. A copy of the Attorney-General's memorandum has been forwarded to Lord Tennyson, who has been asked to represent the Commonwealth Government at the proposed Conference.

3. His Majesty's Prime Minister of the Commonwealth informs me that the Government are greatly impressed with the desirableness of the Commonwealth being included in the Copyright Union, and they do not contemplate any difficulty in securing such amendments in the local copyright law as may be necessary for that purpose.

4. If the suggestions made in the attached memorandum are adopted, much of the Australian Copyright Act will be superseded, and it will only be necessary to pass such Commonwealth laws as may be thought expedient to supplement and give effect to the Imperial law.

5. It may be pointed out that the suggestions made in the memorandum embody no novel principle. Where, for the purposes of the Empire as a whole, it has been found desirable for Imperial legislation to extend to some or all of the British Possessions, various devices have been resorted to (suited to the nature of the legislation) for enabling the Imperial law, either by Order in Council or by local legislation, to apply to certain British Possessions, or to cease to apply to certain British Possessions. Sometimes the King in Council is empowered to extend the Act to any British Possessions (*e.g.*, Colonial Probates Act, 1892; Colonial Solicitors Act, 1900). Sometimes the Act is expressed to extend to British Possessions generally, but the King in Council is empowered to withdraw any Possession from its operation (*e.g.*, International Copyright Act, 1886; Extradition Act, 1870). Sometimes the Act is expressed to extend to British Possessions generally, but the legislature of any Possession is empowered to alter or repeal as regards the Possession, some or all of its provisions (*e.g.*, Coinage (Colonial) Offences Act, 1858; Colonial Affidavits Act, 1859; Merchant Shipping Act, 1894, Section 735). The particular device now suggested in the case of Imperial copyright is suited to the particular subject, which is one of much intricacy, and needs, in the interests of all parts of the Empire, to be dealt with on a uniform basis. It is not, of course, a precedent to be followed except in cases of distinctively the same character.

I have, &c.,

DUDLEY,

Governor-General.

Enclosure in No. 45.

(16S/10.)

IMPERIAL COPYRIGHT.

*Memorandum by the Attorney-General.*

The Revised Convention of Berne for the Protection of Literary and Artistic Works, signed at Berlin on 13 November, 1908, has given a new importance to the proposals for the revision of the copyright laws of the United Kingdom, including the laws relating to Imperial and international copyright.

With respect to Imperial copyright, the position appears to be critical. Owing to a want of unanimity in the views expressed by the various British possessions, there appears to be a danger that Imperial copyright, as it now exists, may be sacrificed, or at least seriously impaired in efficiency, with the result that the Imperial Government will not be able to adhere to the Copyright Union for the Empire as a whole, and international copyright will be seriously affected.

It would not only be a blow to the Imperial idea, but also the loss of a national asset of great value, if, through sectional differences of comparatively small importance, this were to occur.

It appears to me that the matter is capable of simple and logical settlement, in a way which will throw into relief the great benefits and the small burdens of Imperial copyright, will give every self-governing Dominion the free choice between accepting them as a whole or rejecting them as a whole, and will almost certainly lead to their acceptance without action by the Imperial Parliament that can possibly be regarded as an invasion of the legislative sphere of the Dominion.

*Historical Summary.*

An outline of the recent history of the question will help to explain what follows. In 1900 Bills relating to Literary and Artistic Copyright respectively were dealt

with by the House of Lords. Their object was to amend and consolidate the law of copyright, and they were to apply throughout the King's dominions.

It appears that objections were raised by the Governments of certain Responsible Government Colonies to the matter being dealt with so comprehensively by the Imperial Parliament, without regard to the laws or the legislative powers of the Colonies. And in January, 1907, the Colonial Office issued a circular despatch, enclosing copies of clauses proposed to be inserted in the Bills of 1900 to meet these objections. The features of those clauses to which it is necessary to draw attention were:—

- (1) That the Imperial Acts were not to affect the right of any Responsible Government Colonies to legislate as to copyright in the Colony of works first produced in the Colony.
- (2) That the Imperial Acts should only come into operation in a Responsible Government Colony upon adoption, with or without modification, by the Legislature of the Colony.

Those clauses met with a good deal of criticism. It was pointed out, with some reason, that the reservation of Colonial legislative power was expressed in terms which threw doubt on the scope of that power. It was clear that the clauses as framed were unacceptable to several of the Colonies; and the Colonial Office appears to have thought the outlook so discouraging that in a circular despatch of September, 1908, it was announced that the Imperial Government had decided to abandon for the present the proposed comprehensive legislation, and only to proceed with certain specific amendments of the existing law.

Two months later the Revised Convention was signed.

*The Present Position.*

The question of the adherence to the Revised Convention by the United Kingdom, for itself and for the Dominions, is now under consideration, and it seems probable that adherence will necessitate considerable alteration of the copyright law of the United Kingdom. It appears to be assumed that in any re-enactment of the law relating to Imperial copyright, it will be impracticable to bind the Colonies except by means of concurrent legislation by the Colonies concerned.

In my opinion, any scheme which makes Imperial copyright depend upon concurrent Copyright Acts passed in the several Colonies would, almost certainly, fail. Discrepancies of more or less importance would probably occur; complications would be likely to arise in every direction, and the result might easily be that the unity of the Empire in copyright matters would be altogether broken up.

*The Difficulties.*

It will be convenient to note the chief difficulties to be overcome in dealing with the matter.

The first is a question of law. The suggestion seems to have been put forward on behalf of Canada that the power of the Dominion to legislate with regard to copyright is absolute, and not limited, by the provisions of the Colonial Laws Validity Act, to laws not inconsistent with laws of the Imperial Parliament extending to Canada. This claim has not, I believe, ever been admitted by the Imperial Crown Law Officers; and no such claim has ever been made on behalf of the Commonwealth. It does not appear to be tenable, but in any case it is a pure question of law, and may be left to the Courts if it should ever again arise in a judicial proceeding.

The next is more important. It is claimed—and not by Canada only—that as a matter of constitutional right the Imperial Parliament ought not to legislate so as to bind the self-governing Dominions. Those Dominions are naturally jealous of their rights of self-government; and there can be no question that Imperial legislation which extends to and binds the Empire as a whole, without the concurrence of the self-governing Dominions, ought only to be resorted to in matters of grave Imperial concern, where other methods are inadequate. In the suggestions which follow this principle is recognised, and the self-governing powers of the Dominions are given effect to.

The third difficulty is that of the importation into the Dominions of foreign reprints of works first published in the United Kingdom. This question, which has given so much trouble in the case of Canada, is not one which at present affects Australia. It is not necessary to discuss it here, except to say that the suggestions which follow will not stand in the way of its settlement.



*Suggestions.*

I would suggest :—

- (1) That an Act dealing with all the essentials of Imperial copyright law should be passed by the Imperial Parliament, after consultation with the Dominions.
- (2) That the Act should be expressed to extend to all the British possessions.
- (3) Provided that every Responsible Government Dominion should have power, by Act of its Legislature, to declare that the Imperial Act should not extend to that Dominion. (N.B.—After the Imperial Government has acceded to the Convention for any Dominion, such a declaration by the Dominion should not take effect till after a sufficient lapse of time to enable a year's notice of the withdrawal of that Dominion from the Convention to expire.)

The result would be :—

- (a) As to Colonies which did not take advantage of the power to reject the Imperial Act.

The Imperial Act would extend to these Colonies, and they would be unable to pass laws inconsistent with it. They would be partners with the United Kingdom, and with every part of the Empire which had not rejected the Imperial Act, in all the benefits of Imperial copyright; and the Imperial Government could accede for them to the Convention, thus giving them the advantages of international copyright. Each such Colony could *supplement* the Imperial Act, if it chose, as regards copyright in the Colony, by any local legislation not inconsistent with the Imperial Act (*e.g.*, special remedies, procedure, evidence, &c.).

- (b) As to Colonies which chose to reject the Imperial Act.

The Imperial Act would not extend to these Colonies, and therefore any such Colony would be free to pass what laws it pleased with respect to copyright in the Colony, without regard to consistency with the Imperial Act. But copyright in the Colony would confer no rights outside the Colony. The Colony would, of its own free choice, lose the benefits of Imperial and international copyright.

It is almost inconceivable that any Colony would elect to stay outside. Its only gain would be the absolute freedom to deal with local copyright as it chose; its loss would be the loss of copyright throughout the Empire and in other countries.

But even if some Colony did choose this course, at all events the position would be clear and unequivocal. There would be no middle course—no acceptance with qualifications or reservations. The British Parliament would provide a system of copyright for the whole Empire, leaving each Responsible Government Dominion free to reject it if it chose. As far as copyright was concerned, the Empire would be definitely divided into two parts—those inside the circle and those outside. Complications with respect to adherence to the Convention would disappear. No Responsible Government Dominion could complain that its rights of self-government were ignored or infringed. The probability is that Imperial unity in the matter of copyright would be achieved; at any rate, absolute Imperial disintegration would be averted, at the cost only of the exclusion of those Colonies which voluntarily exclude themselves.

8630

No. 46.

THE SECRETARY OF STATE TO THE GOVERNORS-GENERAL AND GOVERNORS.\*

(Sent [To Australia and Canada] 4.50 p.m., 22nd  
[To all others] 4.45 p.m., 23rd March, 1910.)

[Answered by Nos. 48, 49, 50, 51, 52, and 53.]

Copyright Conference: My despatch 3rd [(Australia) 2nd] September, 1908,†

\* Australia, Canada, New Zealand, Newfoundland, Cape of Good Hope, Natal, Transvaal, Orange River Colony.

† Nos. 16 and 17.

contemplated discussion of certain specific points with a view to the amendment of the existing law by concurrent legislation. Position has considerably altered in the interval in consequence of Berlin Convention, and Board of Trade assume that all parties to the Conference will agree that discussion could not now usefully be confined within such narrow limits. They propose that the subjects of discussion should comprise two heads:—

- (1) In what manner is the existing uniformity of the law on copyright to be maintained throughout the Empire?
- (2) In what respects should the existing law be modified, the basis for discussion being the Convention of Berlin.

His Majesty's Government will be glad to learn that your Government accept this proposal.—CREWE.

9628

No. 47.

AUSTRALIA.

THE GOVERNOR-GENERAL TO THE SECRETARY OF STATE.

(Received 2 April, 1910.)

[Copy to Governor-General of Canada, 9 April, 1910. No. 254. L.F.]

(No. 66.)

Commonwealth of Australia, Governor-General's Office.

MY LORD,

Melbourne, 1st March, 1910.

IN continuation of my despatch, No. 51, dated 8th February, 1910,\* relative to Imperial Copyright, I now have the honour to transmit herewith, for your Lordship's information, a copy of a memorandum by the Attorney-General of the Commonwealth, which represents the views of the Government on the subject of the report of the Committee on the law of copyright, copies of which accompanied your Lordship's despatch, No. 456, dated 24th December last.†

I have, &c.,

DUDLEY,

Governor-General.

Enclosure in No. 47.

REPORT of the Committee on the Law of Copyright.

MEMORANDUM.

Having carefully perused the above report, I note that the Committee—

- (a) Recommends adherence by Great Britain to the Convention, with a few minor qualifications;
- (b) Points out that this adherence will necessitate alterations in the copyright law of the United Kingdom;
- (c) Recommends that advantage be taken of this opportunity to place the British law on an intelligible and systematic footing; and
- (d) Makes no report as to Colonial and Imperial copyright, but calls attention to the forthcoming Conference with representatives of the Colonies, and emphasises the importance of the Colonies coming into line with the United Kingdom, and of a uniform law, so far as possible, throughout the Empire.

The report confirms the view of the position which I took in my memorandum of 21st January, and brings into greater prominence the necessity of dealing in a comprehensive way with the question of Imperial copyright.

If the suggestions made in my previous memorandum are adopted, and the revised law of the United Kingdom is made the basis for Imperial as well as British copyright, I assume that the fullest opportunity to discuss the principles and details of the proposed measure will be given to the Dominions.

\* Not printed.

† No. 37.



Meanwhile, the exact terms of the adherence of Great Britain to the Convention are of Imperial as well as purely British concern, as they will affect the proposed legislation; and I think it desirable to make certain suggestions on the subject.

I think that, on behalf of the Commonwealth Government, the general approval of the Convention, expressed by the Committee, may be endorsed. But as to certain specific provisions of the Convention I desire to make, for the consideration of the Imperial Government, a few observations:—

(a) *Choreographic Works and Pantomimes*.—The inclusion of these in the law of copyright appears to me to be open to much question. I take it that the intention of the Convention extends only to set pieces of a definitely dramatic character, and not to minor performances in the nature of "music-hall turns" though the wording is by no means clear. But even so, I foresee great difficulties in the application of the copyright law to mere action and dumbshow, even though "fixed in writing or otherwise," and I doubt the public utility of giving the author of such works the protection of the copyright law with all the attendant difficulties of determining what constitutes an infringement of the law.

(b) *Architecture*.—On this matter I have come independently to the same conclusion as, and am in agreement with, the views of Mr. Joynson-Hicks, Mr. Scrutton, and Mr. Trevor Williams.

(c) *Term of Copyright*.—While recognising the strong trend of Continental opinion in favour of it, I think the extended term is excessive, especially in view of the doubtful suggestions to extend copyright to performances in dumbshow and works of architecture. Moreover, the addition of a fixed term to the term of the author's life (which is of uncertain duration) is not based on any logical principle. There is some logical basis for the present system, which gives the alternative of a fixed period, or of the author's life and seven years thereafter. The present system is less open to the objections which lie to any departure from a fixed period.

I do not suggest that any of the above points are of such outstanding importance as to prevent the acceptance by the Commonwealth, for the purposes of Imperial copyright, of whatever decision is come to by the Imperial Government: but I submit them as questions worthy of careful consideration.

P. M'M. GLYNN,  
Attorney-General.

16 February, 1910.

9763

No. 48.

NATAL.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 12.22 p.m., 2nd April, 1910.)

TELEGRAM.

2nd April. No. 1. Your telegram, 23rd March.\* Ministers concur in proposal.—METHUEN.

9801

No. 49.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 7 p.m., 2nd April, 1910.)

TELEGRAM.

Your telegram 22nd March\* regarding extending limits of discussion at Conference as to copyright. Secretary of State for External Affairs reports to the effect that interpreting proposal as not retrograde Government of Canada prepared to accept proposal and Canadian representative will be prepared and ready to discuss question at large.—GREY.

\* No. 46.

10147

No. 50.

NEWFOUNDLAND.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 8.5 p.m., 5th April, 1910.)

TELEGRAM.

Your telegram, 23rd March,\* Copyright Conference. My Ministers agree to proposal.—WILLIAMS.

10182

No. 51.

TRANSVAAL.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 11.42 a.m., 6th April, 1910.)

TELEGRAM.

6th April. No. 2. My Ministers agree to proposal made in your telegram of 23rd March\* regarding Copyright Conference.—SELBORNE.

10235

No. 52.

NEW ZEALAND.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 7.30 a.m., 7th April, 1910.)

TELEGRAM.

Your telegram, 23rd March,\* Copyright Conference. My Government agree to increasing scope as proposed.—PLUNKET.

10718

No. 53.

AUSTRALIA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 9.35 a.m., 12th April, 1910.)

TELEGRAM.

Your telegram 22nd March,\* Copyright Conference. Ministers concur in proposal therein subject to conference being advisory only, that is, the recommendations or resolutions to be subsequently submitted to this Government for consideration.—DUDLEY.

\* No. 46.



CO 886/4/4



Dominions

No. 24.

Confidential.

COPYRIGHT CONFERENCE, 1910.

MINUTES OF PROCEEDINGS

OF THE

IMPERIAL COPYRIGHT  
CONFERENCE, 1910.



IMPERIAL COPYRIGHT CONFERENCE.

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MINUTES OF PROCEEDINGS

AT THE

IMPERIAL COPYRIGHT CONFERENCE

HELD AT THE

FOREIGN OFFICE, WHITEHALL.

---

FIRST DAY.

---

Wednesday, 18th May 1910.

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PRESENT :

The Right Hon. SYDNEY BUXTON, M.P. (*President of the Board of Trade*),  
(*in the Chair*).

Sir H. LLEWELLYN SMITH, K.C.B. }  
G. R. ASKWITH, Esq., C.B., K.C. } (*Representing the Board of Trade*).  
W. TEMPLE FRANKS, Esq. }

H. W. JUST, Esq., C.B., C.M.G. (*Secretary to the Imperial Conference*,  
*representing the Colonial Office*).

A. LAW, Esq., C.B. (*representing the Foreign Office*).

F. F. LIDDELL, Esq. (*of the Parliamentary Counsel's Office*).

The Hon. SYDNEY FISHER, accompanied by P. E. RITCHIE, Esq. (*representing*  
*the Dominion of Canada*).

The Right Hon. LORD TENNYSON, G.C.M.G. (*representing the Commonwealth of*  
*Australia*).

The Hon. W. HALL JONES (*representing the Dominion of New Zealand*).

The Hon. Sir RICHARD SOLOMONS, K.C.B., K.C.M.G., K.C.V.O., K.C. (*representing*  
*the Cape of Good Hope, Natal, Transvaal, and the Orange River Colony*).

The Hon. Sir EDWARD MORRIS, K.C. (*representing Newfoundland*).

Sir THOMAS RALEIGH, K.C.S.I. (*representing the India Office*).

A. B. KEITH, Esq. (*of the Colonial Office*) and } *Joint Secretaries*.  
T. W. PHILLIPS, Esq. (*of the Board of Trade*) }

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The PRESIDENT: Gentlemen, the immediate reason for our meeting here is the Berlin Copyright Conference of two years ago, in which many of the great Nations took part. The outcome of the Conference was the Revised Convention which was signed at Berlin on behalf of the British Government—signed, I desire



to say, *ad referendum*, with full liberty to ratify or not, or to make reservations to the Convention, if it were subsequently thought advisable.

The first International Copyright Convention was that of Berne in 1887, when for the first time an attempt was made to form an International Union for the reciprocal protection of authors among the various nations which were party to it. I take it that the fundamental basis of that Convention was that all the nations joining the Union should reciprocally give the advantage of their various local Copyright Acts to other members of the Union. The Berne Convention did not go very much further than that in the direction of providing a code of International Copyright Law owing to the great divergencies which then existed between the various local Copyright Acts. There was a further Conference in Paris in 1896 in which some amendments were made. A considerable time then passed, and during that interval, with the exception of the United Kingdom, where, I am sorry to say, we have not for very many years past made any progress in copyright reform, nearly every other nation belonging to the Union, influenced partly, we may suppose, by the Berne Convention, remodelled its Copyright Acts, and brought them more into accord with present-day requirements and present-day views. Some of them, in anticipation of the revision of the Convention, made reciprocal Treaties with regard to these matters, in order to give each other the advantages which accrued from their local legislation. In consequence, a desire sprang up on the Continent to have a further Conference with a view to framing a revised and more complete Convention. This Conference took place in Berlin in 1908, and was of a very representative character. Perhaps, in that connection, I may just refer to the great loss we all feel the copyright question has sustained by the death of Sir Henry Bergne, who was the chief British delegate at that Conference.

The result of that Conference was the drafting of a revised Convention, which it is proposed shall supersede the various other Agreements and Conventions which are now in force. The British delegates were authorised to sign that Convention subject to subsequent ratification, if, after consideration by His Majesty's Government and by those representing the Dominions, it was thought advisable to ratify, or to ratify subject to certain reservations.

The advance which was made in the Berlin Convention was partly to provide a single document instead of the three that previously existed, and partly to embody a number of important amendments. The result was that, as regards the United Kingdom especially, various proposals were adopted which are somewhat new to our laws. One of the principal alterations which is proposed in the Berlin Convention—indeed, many of its proposals are dependent on it—is the entire abolition, in International relations, of what are called “formalities,” that is to say, that there should be no necessity for registration or other formalities in order to obtain or retain copyright.

The Convention dealt also with the question of the date from which copyright should run, whether from the end of the author's life or from publication, and with the question of the period of copyright. The proposal made was that copyright should run for life and for fifty years afterwards. This proposal, as you know, differs to a considerable extent from our existing system of copyright.

There are also proposals to grant a wider copyright to literary works, and to give the protection of copyright to, for instance, music against its reproduction without payment by mechanical means. Some of these points are new, so far as we are concerned, or are differently treated under our law.

All these points, and others to which I need not now refer, were very carefully examined by a strong Departmental Committee appointed by the Board of Trade and presided over by Lord Gorell. This Committee came unanimously to the conclusion that the Berlin Convention should be ratified; and, further, they came to substantial agreement on very nearly every point, I think, with regard to these various questions connected with the proposals of the Convention.

That is the International position. With the Imperial position you are familiar; and you are aware of the very great difficulties which, up to now, have beset the path, and which have rendered it difficult or impossible to deal with the reform of the Copyright Law.

But there is another strong reason for dealing with the question. As long ago as 1878 a Royal Commission reported that the British Copyright Law stood in urgent need of reform, but, owing to the difficulties of the question—inherent, International

and Imperial—scarcely anything has been done to carry their recommendations into effect.

The Berlin Convention has shown further defects, and the examination by the Gorell Committee has further proved that the question is of great importance and of great urgency. Indeed, I feel sure that anyone who has studied the question of copyright must admit that the time has fully come when, quite apart from any question of the Berlin Convention, or the Imperial aspect of the question, the question of copyright really ought to be dealt with afresh.

When I came to examine the copyright question in view of this Conference, I found, as I think everybody who has had to deal with it has found, that it abounds in questions of the utmost complexity. I think it was the Commission of 1878 who reported that “the law” (that is, the copyright law) “is wholly destitute of any sort of arrangement, incomplete, often obscure, and even when it is intelligible upon long study, it is in many parts so ill-expressed that no one who does not give such study to it can expect to understand it”; and they go on to make other observations of the same sort with regard to our Copyright Law, and urge strongly that it requires amendment, simplification, and codification, and should be placed on a systematic and uniform basis.

It is clear from what I have said that adherence to the Berlin Convention would involve in some respects a considerable departure from our copyright system and our Copyright Acts here, and would involve, therefore, an Act of Parliament. That being so, it became necessary for His Majesty's Government to consider what should be their attitude in reference to the Berlin Convention, and they recognised, of course, as they have always done with regard to these copyright matters, that it was an Imperial as well as a United Kingdom question, and that it was necessary, therefore, to take into consultation those representing the self-governing Dominions over the seas. That is the reason, as you are aware, why delegates representative of the self-governing Dominions, of the Dependency of India, and of the Home Government are met this morning.

In regard to the general position, His Majesty's Government have come to the conclusion, in the first place, that it is of the highest importance, both from the point of view of efficiency and from the point of view of the Imperial connection, to obtain uniformity of legislation as regards copyright throughout the British Empire. That is the first proposition they desire to place before the Conference.

In the second place, they consider it highly important to attain as great a degree of uniformity as is reasonably practicable among the principal Nations of the world with regard to International copyright. Taking those two points together, they consider it desirable, therefore, to ratify the Berlin Convention, if this course is practicable without any undue sacrifice of any important British interests.

In examining this matter we shall, of course, have to consider the details on their merits and what they involve. His Majesty's Government are of opinion that it is important that, if we ratify the Berlin Convention at all, we should ratify with as few alterations and reservations as possible. I desire, however, to say with regard to the detailed provisions of the Convention that we are not committed in any sense to their terms, and that they will be fully open to discussion by the Conference, in order to see how far they may be applicable to us here or to the Dominions, and how far we may wish to modify them or to reserve points in connection with them.

LORD TENNYSON: May I ask if you have the heads of your draft Bill? It would be very useful.

The PRESIDENT: No; we are preparing a draft Bill, but I think as regards questions of detail we can easily put the Conference in possession of the points that are important. I do not know whether the procedure I suggested would meet your view. What do you think, Mr. Fisher?

Mr. FISHER: I think, Mr. President, if I might suggest, the general principle of the possibility of uniformity and the methods of arriving at it had better be discussed before we go into any details?

The PRESIDENT: That is what I suggested.



Mr. FISHER: There has been some difficulty in the past in regard to what I might call perhaps the constitutional question of legislation for the self-governing Dominions, and some difficulties have arisen in the past, as regards Canada, at all events, on that point. I do not know that the same difficulties have arisen perhaps with the other self-governing Dominions, because Canada occupies in that respect a rather peculiar position from her juxta-position with the United States, another great English-speaking country, which publishes largely the same works that are published in Great Britain and in the Empire. Our position there is so peculiar that it may be that our difficulties are not shared by either the Mother Country or the other self-governing Dominions, but there are very great difficulties in the way of uniform legislation. I do not know that it would be well for me to go into details of that kind with regard to that, except to put the general idea before the Conference. That is, perhaps, the chief reason why the constitutional question of self-government has arisen in regard to Canada particularly—that we have felt strongly that the legislation on copyright as other legislation in Canada ought to be passed by the Parliament of Canada, and one of the difficulties that has arisen with us, both in regard to the Berne Convention and in regard to general legislation has been due to the fact that the Imperial Copyright Act of 1842 applies to Canada just in the same way, or rather overrides our own local copyright Act.

That involves the very broad and general principle which, however, I think it is necessary should be discussed and dealt with before we proceed to any discussion of details of an Act.

The PRESIDENT: Lord Tennyson has given notice of some propositions that really raise the points in a concrete form and perhaps it might be a convenience to the Conference if we dealt with them in that form. Would it suit you, Mr. Fisher, if it was raised in that form?

Mr. FISHER: Quite.

The PRESIDENT: Perhaps Lord Tennyson will submit his propositions?

LORD TENNYSON: Mr. Buxton and Gentlemen—I think I had better begin first by reading a despatch from the late Prime Minister of the Commonwealth of Australia, followed by a proposal in the form of a memorandum. I may say that both the despatch and the memorandum have been confirmed by the present Prime Minister of Australia and his Government. In answer to a telegram of mine of April 18th, I am instructed to proceed on the "lines of Mr. Deakin's despatch," which includes the memorandum. The despatch is dated 24th January, 1910:—

"My Lord,

"With reference to previous correspondence regarding the Imperial Copyright Conference, I have the honour to forward herewith a memorandum by the Attorney-General which represents the views of this Government on the subject.

"2. I would add that Ministers are greatly impressed with the desirableness of the Commonwealth being included in the Copyright Union, and they do not contemplate any difficulty in securing such amendments in the local copyright law as may be necessary for that purpose.

"3. If the suggestions made in the attached memorandum are adopted, much of the Australian Copyright Act will be superseded, and it will only be necessary to pass such laws as may be thought expedient to supplement and give effect to the Imperial law.

"4. It may be pointed out that the suggestions made in the memorandum embody no novel principle. Where, for the purposes of the Empire as a whole, it has been found desirable for Imperial legislation to extend to some or all of the British possessions, various devices have been resorted to (suited to the nature of the legislation) for enabling the Imperial law, either by Order in Council or by local legislation, to apply to certain British possessions, or to cease to apply to certain British possessions. Sometimes the King in Council is empowered to extend the

Act to any British possession (e.g., Colonial Probates Act, 1892; Colonial Solicitors Act, 1900). Sometimes the Act is expressed to extend to British possessions generally, but the King in Council is empowered to withdraw any possession from its operation (e.g., International Copyright Act, 1886; Extradition Act, 1870). Sometimes the Act is expressed to extend to British possessions generally, but the legislation of any possession is empowered to alter or repeal, as regards the possession, some or all of its provisions (e.g., Coinage (Colonial) Offences Act, 1853; Colonial Affidavits Act, 1859; Merchant Shipping Act, 1894, section 735). The particular device now suggested in the case of Imperial copyright is suited to the particular subject, which is one of much intricacy, and needs, in the interests of all parts of the Empire, to be dealt with on a uniform basis. It is not, of course, a precedent to be followed except in cases of distinctively the same character.

"I have the honour to be,

"My Lord,

"Your most obedient servant,

"(Signed) ALFRED DEAKIN."

And the following is the memorandum by the Attorney-General:—

"The Revised Convention of Berne for the Protection of Literary and Artistic Works, signed at Berlin on 13th November 1908, has given a new importance to the proposals for the revision of the copyright laws of the United Kingdom, including the laws relating to Imperial and International Copyright.

"With respect to Imperial Copyright, the position appears to be critical. Owing to a want of unanimity in the views expressed by the various British Possessions, there appears to be a danger that Imperial Copyright, as it now exists, may be sacrificed, or at least seriously impaired in efficiency, with the result that the Imperial Government will not be able to adhere to the Copyright Union for the Empire as a whole, and International Copyright will be seriously affected.

"It would not only be a blow to the Imperial idea, but also the loss of a national asset of great value, if, through sectional differences of comparatively small importance, this were to occur.

"It appears to me that the matter is capable of simple and logical settlement, in a way which will throw into relief the great benefits and the small burdens of Imperial copyright, will give every self-governing Dominion the free choice between accepting them as a whole or rejecting them as a whole, and will almost certainly lead to their acceptance without action by the Imperial Parliament that can possibly be regarded as an invasion of the legislative sphere of the Dominion.

#### "HISTORICAL SUMMARY.

"An outline of the recent history of the question will help to explain what follows.

"In 1900, Bills relating to literary and artistic copyright respectively were dealt with by the House of Lords. Their object was to amend and consolidate the law of copyright, and they were to apply throughout the King's Dominions.

"It appears that objections were raised by the Governments of certain responsible Government Colonies to the matter being dealt with so comprehensively by the Imperial Parliament, without regard to the laws or the legislative powers of the Colonies. And in January 1907 the Colonial Office issued a circular despatch enclosing copies of clauses proposed to be inserted in the Bills of 1900 to meet these objections. The features of those clauses to which it is necessary to draw attention were:—

"(1) That the Imperial Acts were not to affect the right of any responsible Government Colonies to legislate as to copyright in the Colony of works first produced in the Colony.

"(2) That the Imperial Acts should only come into operation in a responsible Government Colony upon adoption, with or without modification, by the legislature of the Colony.

"Those clauses met with a good deal of criticism. It was pointed out, with some reason, that the reservation of Colonial legislative power was expressed in terms



which threw doubt on the scope of that power. It was clear that the clauses *as framed* were unacceptable to several of the Colonies; and the Colonial Office appears to have thought the outlook so discouraging that in a circular despatch of September 1908 it was announced that the Imperial Government had decided to abandon, for the present, the proposed comprehensive legislation, and only to proceed with certain specific amendments of the existing law.

"Two months later the Revised Convention was signed.

#### "THE PRESENT POSITION.

"The question of the adherence to the Revised Convention by the United Kingdom, for itself and for the Dominions, is now under consideration, and it seems probable that adherence will necessitate considerable alteration of the copyright law of the United Kingdom. It appears to be assumed that in any re-enactment of the law relating to Imperial Copyright, it will be impracticable to bind the Colonies except by means of concurrent legislation by the Colonies concerned.

"In my opinion, any scheme which makes Imperial Copyright depend upon concurrent Copyright Acts passed in the several Colonies would, almost certainly, fail. Discrepancies of more or less importance would probably occur; complications would be likely to arise in every direction; and the result might easily be that the unity of the Empire in copyright matters would be altogether broken up.

#### "THE DIFFICULTIES.

"It will be convenient to note the chief difficulties to be overcome in dealing with the matter.

"The first is a question of law. The suggestion seems to have been put forward on behalf of Canada that the power of the Dominion to legislate with regard to copyright is absolute, and not limited, by the provisions of the Colonial Laws Validity Act, to laws not inconsistent with laws of the Imperial Parliament extending to Canada. This claim has not, I believe, ever been admitted by the Imperial Crown Law officers, and no such claim has ever been made on behalf of the Commonwealth. It does not appear to be tenable; but in any case it is a pure question of law, and may be left to the Courts if it should ever again arise in a judicial proceeding.

"The next is more important. It is claimed—and not by Canada only—that as a matter of constitutional right the Imperial Parliament ought not to legislate so as to bind the self-governing Dominions. Those Dominions are naturally jealous of their rights of self-government; and there can be no question that Imperial legislation which extends to and binds the Empire at a whole, without the concurrence of the self-governing Dominions, ought only to be resorted to in matters of grave Imperial concern, where other methods are inadequate. In the suggestions which follow this principle is recognised, and the self-governing powers of the Dominions are given effect to.

"The third difficulty is that of the importation into the Dominions of foreign reprints of works first published in the United Kingdom. This question, which has given so much trouble in the case of Canada, is not one which at present affects Australia. It is not necessary to discuss it here, except to say that the suggestions which follow will not stand in the way of its settlement.

#### "SUGGESTIONS.

"I would suggest:—(1) That an Act dealing with all the essentials of Imperial Copyright law should be passed by the Imperial Parliament after consultation with the Dominions. (2) That the Act should be expressed to extend to all the British possessions. (3) Provided, that every Responsible Government Dominion should have power, by Act of its Legislature, to declare that the Imperial Act should not extend to that Dominion. (N.B.—After the Imperial Government has acceded to the Convention for any Dominion such a declaration by the Dominion should not take effect till after a sufficient lapse of time to enable a year's notice of the withdrawal of that Dominion from the Convention to expire.) The result would be:—(A) As to Colonies which did not take advantage of the power to reject the Imperial Act: The

Imperial Act would extend to those Colonies, and they would be unable to pass laws inconsistent with it. They would be partners with the United Kingdom, and with every part of the Empire, which had not rejected the Imperial Act, in all the benefits of Imperial Copyright, and the Imperial Government could accede for them to the Convention, thus giving them the advantages of International Copyright. Each such Colony could *supplement* the Imperial Act, if it chose, as regards copyright in the Colony, by any local legislation not inconsistent with the Imperial Act (*e.g.*, special remedies, procedure, evidence, &c.). (B) As to Colonies which chose to reject the Imperial Act: The Imperial Act would not extend to these colonies, and therefore any such Colony would be free to pass what laws it pleased with respect to copyright in the Colony, without regard to consistency with the Imperial Act. But copyright in the Colony would confer no rights outside the Colony. The Colony would, of its own free choice, lose the benefits of Imperial and International Copyright. It is almost inconceivable that any Colony would elect to stay outside. Its only gain would be the absolute freedom to deal with local Copyright as it chose; its loss would be the loss of Copyright throughout the Empire and in other countries. But even if some Colony did choose this course, at all events the position would be clear and unequivocal. There would be no middle course—no acceptance with qualifications or reservations. The British Parliament would provide a system of Copyright for the whole Empire, leaving each Responsible Government Dominion free to reject it if it chose. As far as Copyright was concerned the Empire would be definitely divided into two parts—those inside the circle and those outside. Complications with respect to adherence to the Convention would disappear. No Responsible Government Dominion could complain that its rights of self-government were ignored or infringed. The probability is that Imperial unity in the matter of Copyright would be achieved; at any rate, absolute Imperial disintegration would be averted, at the cost only of the exclusion of those Colonies which voluntarily exclude themselves."

Now I should like to make a few personal observations on what I have said in putting forward these propositions on behalf of the Commonwealth. First, this Convention has been thoroughly discussed and argued upon by all the chief countries in Europe and by some outside Europe for more than six weeks, and by Committees of representatives of those countries, some representing the public, as Mr. Buxton has told us, such as Ambassadors, other experts in Copyright or representing all the interests of Literature and Art. Each country has had its say; there has necessarily been give and take; and the result is a simplified and uniform Code, and the best chance of uniformity that has ever occurred. Secondly, this same Convention has been discussed and sifted for weeks by a very strong Committee in this country representing all shades of opinion, and they have one and all agreed in favour of ratification; and the very large majority was in favour of extension to life and 50 years, which alone can be carried internationally, and alone can produce ultimate uniformity. Thirdly, with such a result it would be most unwise again, it seems to me, to discuss details, particularly as we ourselves have the documents, reports, &c., and the mass of evidence taken, in our hands; and I, for one, having studied them, endorse heartily the Report of the majority of the Committee; and let me add that I have been aided in my investigation by the knowledge that I previously acquired as a member of the House of Lords Committee on Lord Monkswell's Bill. Fourthly, special reserves for individual Colonies would be impolitic, for the chance now presents itself for the first and perhaps the last time (a) of an International agreement on a wide basis; (b) of an Imperial agreement on a wide basis; (c) of a revision and codification of the innumerable Acts upon Copyright and of a consequent change from chaos to order, and (d) of putting Great Britain and the Empire in the van of advance for a more reasonable and fairer recognition and support of the claims of Literature and Art.

Having regard to the very great desirability of general unanimity on this great question, it seems to me (as I have said) that it would be out of reason to insist on details, but I should be inclined myself to advance on behalf of Australia; for instance, to refuse such comprehensive protection to Choreographic works, as perhaps Italy especially desires (we should wish, of course, to protect works like "L'Enfant Prodigue"). We should hope that the article on architecture might be made not so comprehensive for us, though we could not well exclude a great section of Art like original creations of architects which other great countries desire to see protected



and are protecting and which, as they have shown by their legislation and cases in their Courts, can be protected without harm to the interest of the community at large. We must be careful not in any manner to whittle away the protection to a limit which would reduce many existing rights and not give International unity and not lead to the gratitude and support of the great writers or the great artists.

I can only earnestly appeal to the members of this Conference not to question details but to take the wide and far-reaching International view adopted by the great nations of Europe. A great opportunity is now before our Empire to stand in union before the world, and I trust that the different portions of the Empire will avail themselves of it, and that Mr. Buxton's Bill will be, owing to our broad-based unanimity, a strong record of advance. If we join and act in harmony on broad lines, we shall undoubtedly link together the different portions of the Empire by an Imperial measure of legislative justice earnestly desired and constantly advocated during a long period of time.

Shall I read the Resolutions?

The PRESIDENT: Yes.

LORD TENNYSON: "(1) That an Act dealing with all the essentials of Imperial Copyright Law should be passed by the Imperial Parliament, after consultation with the Dominions. (2) That the Act should be expressed to extend to all the British possessions. (3) Provided that every Responsible Government Dominion should have power, by Act of its Legislature, to declare that the Imperial Act should not extend to that Dominion."

The PRESIDENT: Will you move that?

LORD TENNYSON: Yes, I will.

Sir RICHARD SOLOMON: Can we not take these Resolutions separately? Some of us might agree to the first Resolution and object to the second.

The PRESIDENT: It is in your hands.

LORD TENNYSON: I beg to move the first Resolution.

Mr. HALL JONES: I have much pleasure in seconding the Resolution moved by Lord Tennyson. It seems to me to contain in a concise form the basis for Imperial Copyright. I suppose one cannot avoid referring to the latter part of the Resolution, which gives ample power to the Responsible Governments of the Dominions who do not desire to take advantage of the Imperial Law, to stand out of that Act. I think that acceptance of the Resolution will give us a skeleton upon which we can frame a law that will be acceptable to the whole of the Empire.

Mr. FISHER: Before adopting that, I would like to point out that the framing of an Imperial Copyright Law in consultation with the Dominions to a very large extent would commit the Dominions rather absolutely to the acceptance of that law. Again, I am afraid I must point out that without going into the details of the law, on which my impression is we ought to arrive at some fairly satisfactory agreement, there is the difficulty of the application of a law passed by the Imperial Parliament to the outlying self-governing Dominions without any action of their Parliaments, which to my mind (I am speaking for Canada) is objectionable. The difficulties which have arisen in the past have been very carefully and very fully presented to the Imperial Government on behalf of Canada. I dare say the representatives of the other self-governing Dominions here have not followed that discussion, but the fundamental position has been taken by the representatives of Canada that the Federal Parliament of Canada ought to have full right for legislation for Canada, as is quite properly expressed in this memorandum on behalf of the Commonwealth of Australia. I do not know that that could be maintained from a purely legal point of view, but as a matter of policy

—as a matter of Imperial policy, as a matter of recognition of the power of self-government of the Dominions beyond the Seas—I do not think there can be any question but that it ought to be recognised. The Law Officers of the Home Government, and, I think, probably the Law Officers of the various self-governing Dominions, would maintain that a law passed by the Imperial Parliament would have force and effect all over the Empire when the law was so stated, but that has been held, in Canada at all events, to be an invasion of the rights and powers that were conferred by the British North America Act on the Federal Parliament of Canada; and although the interpretation of the Act and the legal point of view may be open to doubt—although some eminent Canadian lawyers have held that that is not the case—I think it is a question rather outside the law and a question of Imperial policy.

I think that that point must be raised at the present time in discussing this first proposition. This proposition is that the Imperial Parliament should pass an Imperial Copyright Law, the intention being, as is afterwards expressed, that that shall have force and effect in all the King's Dominions. On behalf of Canada I must take exception to that procedure.

Mr. HALL JONES: I would point out it is "All the essentials of Imperial Copyright Law." It is only a question of arriving at what is essential.

Mr. FISHER: No, I think it goes beyond that to the Constitutional question which is of the essence of it.

Sir RICHARD SOLOMON: May I make a few remarks on the first Resolution?

Now, Sir, personally I am all in favour of having a uniform legislation throughout His Majesty's Dominions on the subject of Copyright, and not only on the subject of Copyright, but on many other subjects. At present we confine ourselves to Copyright. I do think that the first step to be taken towards obtaining that uniformity is for the Imperial Parliament to pass an Act which I hope would repeal all the existing Statutes on Copyright—codify them and give effect to the Articles in the revised Convention signed at Berlin.

Lord Tennyson's Resolution proposes that this Act should be passed by the Imperial Parliament after consultation with the Dominions. I do not know how that consultation is to take place. If it is to be by correspondence, it seems to me, judging from the correspondence which has already taken place, that no agreement will be arrived at, or, at all events it will take a very long time to come to an agreement, and I understand it is very necessary from the Imperial point of view that legislation should be passed as soon as possible amending the existing law here so as to give effect to the Articles of the revised Convention signed at Berlin.

The PRESIDENT: I should like to ask Lord Tennyson a question on that as you have raised it, Sir Richard. Certainly the impression left on my mind was that this motion intended by the words, "After consultation with the Dominions," this particular Conference we are having round this table at the present moment.

LORD TENNYSON: That is right.

The PRESIDENT: That seems the best way of discussing both principles and details if necessary. May I take it that that was your view?

LORD TENNYSON: That was the intention.

The PRESIDENT: Does that meet your point, Sir Richard, or rather, answer your question?

Sir RICHARD SOLOMON: I had hoped that when we came to this Conference we should have had placed before us the draft Bill to be introduced into the Imperial Parliament on the lines which Lord Tennyson has suggested. I think we could have



gone through that draft Bill and come to some agreement upon it, and that Bill, if passed by the Imperial Parliament after consultation with the representatives of the several Dominions, would have been looked upon with greater favour by the self-governing Colonies than an Act passed by the Imperial Parliament without any consultation at all.

I am entirely in accord with some of the remarks which have been made by Mr. Fisher, who represents Canada, but my remarks upon that question, I think, will arise better when we come to discuss the second Resolution proposed by Lord Tennyson. At present I am all in favour of the Imperial Government—I think that is the first step towards any uniformity in copyright Law—passing a law codifying the existing law and amending it so as to give effect to the terms of the Berlin Convention. That is the first thing I should like to see done.

Then the important constitutional question arises afterwards as to how that Act is to be applied to the self-governing Colonies of the Empire. That, in my opinion, is the most important question we have to consider, but I only want to emphasise that the first step I want to see is an Act passed by the Imperial Parliament. At present, in the Colonies, we do not know what your law is; it is scattered through so many different Statutes.

Mr. ASKWITH: We do not know either.

Sir RICHARD SOLOMON: You have Orders in Council in addition to Imperial statutes dealing with copyright, and we do not know where we are, but if you have the whole law of Copyright put into one Act of Parliament, I have no doubt myself that if that is a reasonable Act, as I have no doubt it will be, the Parliament of South Africa will either take it over by merely proclaiming it to be in force in South Africa, or by legislating on identical lines.

May I venture to make this remark—that if any such Act as this is passed by the Imperial Parliament, we shall have no references to Orders in Council? What I mean by that is this—surely that Act can express what are the rights of an author throughout His Majesty's dominions on publishing his work in one of the countries of the Union? At present, under the International Copyright Act of 1886, you have to go to an Order in Council to find out what those rights are. I see, myself, no difficulty whatever in expressing those rights in the Act itself and not referring to the Orders in Council. We do not like Orders in Council in the Colonies.

The PRESIDENT: I understand your point rather is that you suggest that it would have been better if we had actually had the draft of the Bill to place before the Conference.

Sir RICHARD SOLOMON: Yes, I do think so.

The PRESIDENT: The difficulty which occurred to us was this: We have worked at the Bill to a certain extent, but you know what an Act of Parliament is when it is put into legal language; it is not very easy to understand, and we thought on the whole that the Report of the Departmental Committee and their Appendix put very clearly, Article by Article, the various proposals of the Berlin Convention, and that that would be before the Conference. But of course we could easily summarise the various heads—at all events the matters of any importance—and possibly under pressure we might draft a Bill, but I do not think, if I might venture to suggest, as I know something about Bills, that the actual Bill would help. What you really want to know is not the legal drafting language, but what the points are in ordinary common or garden English, which is very much more easy to understand. Those, we considered, are contained in these Articles in the Report of the Committee of Inquiry, Lord Gorell's Committee, and there they are—the Articles themselves printed—and they are fairly clear. I have had rather in my mind that supposing the Conference agreed to the general principles of proposals, it would be well that they should go into the question of some of these details to see what our present law was and how far this proposes to alter it, and how far it is advantageous to have it altered in that respect. I rather gathered from Lord Tennyson that he was adverse to discussing details.

LORD TENNYSON: I think my proposal would be best.

The PRESIDENT: To discuss the details?

LORD TENNYSON: No, but to go into these Articles generally, not particularly, which is quite a different thing.

The PRESIDENT: That of course we could do, but on the whole I am inclined to agree with Mr. Fisher that we had better first consider the question of the form—that assuming afterwards we are able to agree on the general proposals, we should, in the first instance, consider the best form they should take or rather the form which would make them acceptable to the various Dominions, and especially to Canada, which of course has, as we all recognise, special difficulties with regard to this matter.

Sir RICHARD SOLOMON: It seems to me that comes under the second Resolution to be proposed by Lord Tennyson as far as the Colonies are concerned.

The PRESIDENT: Although we have to deal with the first, we must really take them all together.

Mr. FISHER: It struck me, if I might add an observation—in the first place I do not wish to be misunderstood—I am quite in sympathy with the desire for uniformity and with adhering to the International Convention if it is in any way possible to do so. The reason I brought that matter up was that I gathered from the form of this Resolution that the intention was for the Imperial Act to apply to the self-governing Dominions without the intervention of their Legislatures—without any legislation—which I thought objectionable. The International Convention is practically an agreement between the countries that each one will legislate in accordance with its own conditions and desires, but that it should embody in its legislation certain general points which are accepted and made clear in the Convention. It seems to me that same principle might apply to the different self-governing parts of the Empire—that each of them should legislate in accordance with its own conditions and circumstances and embody as far as it can the principles enunciated in the Convention, perhaps even going as far as the Convention itself does. As I understand the Convention, a copyright obtained in any one country of the Union grants protection in all the other countries of the Union. It is obtained originally in the country where it is obtained under the laws of that country.

LORD TENNYSON: That has to do with my second Resolution.

Mr. FISHER: Quite so—perhaps more particularly, and I am quite willing to leave it until that point is raised.

The PRESIDENT: The real difference, I take it, between the two views—I should like to be quite clear in my mind—is that the Australian proposal is that there should be an Imperial Act which would run throughout the whole of the Empire, but that any Dominion, if that Dominion desired, should by an Act of its Legislature exclude itself from the operation of this general Imperial Act and pass its own laws with regard to Copyright, and stand entirely outside the Imperial Act. This Imperial Act, no doubt (that is the point raised by Sir Richard), would repeal the existing Imperial Copyright Acts, at all events as far as the Dominions were concerned which came under its operations, and the question then would arise if a Colony stood out, how far those existing Imperial Acts would continue to apply to that particular Dominion.

Mr. Fisher's proposal is, if I understand it aright, the other way, that while there should be an Imperial Act, each Dominion should assent to that or come into it by concurrent legislation of its own, which legislation might modify the Imperial Act



in certain respects so far as the particular interests of the Dominion were concerned. Those seem to be the two differences. I am sure we are all desirous, if we can, to get the greatest possible uniformity in the matter, and the question is how far we can bring those two propositions together, and how far we can combine them in some general proposition. Sir Richard objects to Orders in Council. Orders in Council are sometimes very useful, but perhaps they are not dignified enough sometimes.

Mr. HALL JONES: They are a necessary evil.

The PRESIDENT: Yes, a necessary evil.

Sir H. LLEWELLYN SMITH: I understand Sir Richard to object to an Order in Council that defines rights of authors, not one which brings an Act into operation.

Sir RICHARD SOLOMON: Yes. What I desired to point out was this—

The PRESIDENT: You must have an Act.

Sir RICHARD SOLOMON: Yes.

The PRESIDENT: I think we are all agreed upon that. Besides I do not suppose we could do it except by an Act of Parliament. Any alterations would have to be done by Act of Parliament.

Mr. ASKWITH: Is Resolution 1 anything more than a pious opinion embodying the advice and desire of the Conference, and the pith of the point made by Mr. Fisher exists in the Resolutions headed 2 and 3? No. 1 we might take as *de bene esse* and go on to Nos. 2 and 3. (Hear, hear.)

Mr. FISHER: We have been rather discussing the whole question together. There are, however, one or two matters which have been put forward in the memorandum that was read by Lord Tennyson in which I would hardly like to concur absolutely. In one case in the suggestions which follow this principle is recognised and the self-governing powers of the Dominions are given effect to, I do not think quite so effectively as I would like, but that is a minor matter perhaps. It is also said that "it is almost inconceivable that any Colony would elect to stay outside." I am afraid I can hardly accept that. It is quite possible Canada might have to elect to stay outside. Then I do not like this statement: "there would be no middle course—no acceptance with qualifications or reservations." Under the Berlin Convention it is proposed that countries may join the Union with reservations, and I do not see why in any Imperial arrangement within the Empire there should not be the same latitude allowed. It is quite conceivable to my mind, speaking for ourselves, that we might be quite willing to adopt and glad to adopt the same provisions as the Imperial Copyright Act, but we might have to add certain conditions or certain provisions which would apply to us under our peculiar circumstances, and which would be necessary for our protection under our peculiar circumstances.

The PRESIDENT: On a point of order, I think it is clear that for the convenience of the Conference as a whole, although we are actually on Resolution No. 1, any one should be able to refer to the others. They clearly all run together.

Sir RICHARD SOLOMON: I only meant that if each Colony made its own separate reservations, you might say good-bye to uniformity.

The PRESIDENT: The first resolution, the resolution we are actually on, says: "That an Act dealing with all the essentials of the Imperial Copyright law should be passed

by the Imperial Parliament after consultation with the Dominions." What I think we are all agreed about, and I think Mr. Fisher agrees there, is that as far as possible in this matter there should be uniformity, whether it is by one Imperial Act or by concurrent legislation; and I do not know whether we could, as a Conference, start by some proposition in that direction which, to a certain extent, will indicate the view we hold, even although afterwards we might have, as regards Canada, at all events, to admit some elasticity and some latitude. I take it you are entirely in accord with that general proposition, Mr. Fisher?

Mr. FISHER: Quite.

Mr. HALL JONES: The difference of opinion would come in on the retention or deletion of the "not" in the last line but one of clause 3—if it were to read: "Provided that every Responsible Government Dominion should have power by Act of its Legislature to declare that the Imperial Act should extend to that Dominion." I understand that would meet Mr. Fisher's wishes.

Mr. FISHER: It would be very much better.

Sir H. LLEWELLYN SMITH: It would be better to put in the words "whether or not."

LORD TENNYSON: That is quite right.

Sir H. LLEWELLYN SMITH: That would give those parts of the Empire which preferred the Australian plan the power of coming in direct.

Mr. HALL JONES: We might come to a unanimous decision on No. 1.

The PRESIDENT: What do you think of that, Mr. Fisher?

Mr. FISHER: I think we would have to consider it necessary that the Imperial Act should apply to Canada through the action of the Canadian Legislature.

Sir H. LLEWELLYN SMITH: It might be a single clause Act scheduling it and applying it.

Mr. FISHER: Yes, although I think great liberty would have to be still granted so that, where certain provisions are found necessary under the peculiar circumstances of a self-governing Dominion, that Dominion would be free to legislate in that direction.

The PRESIDENT: Mr. Fisher, it might be convenient and it might assist us if you had in your own mind a concrete point in regard to the difficulty of your connection with the United States and the difficulty of your Canadian publishers.

Mr. FISHER: Our chief difficulty really is our want of connection, if I may put it in that way, with the United States. Under the International Convention the United States is outside the Convention, but still any American citizen by publishing in Great Britain, or in one of the other countries of the Union, can immediately obtain all the advantages of the Union. Now I must say, speaking frankly, I think that is a blemish on the Union; I think it raises a difficulty in the Union which is very great for us.

The PRESIDENT: What do you mean, Mr. Fisher?

Mr. FISHER: This, that a citizen, a subject of a country which is outside the Union, by simple publication within the Union can obtain all the advantages of



the Union in all the Union countries. That to my mind is a very great blemish on the Union. I consider the Union ought to be a Union of powers or countries reserving to themselves the advantages of the Union. As it is to-day, the United States has no inducement to join the Union, and it will not join the Union because it has no inducement. An American author, or even an American publisher, I think, as far as my memory serves me, can obtain all the advantages of the Union in all the countries of the Union.

The PRESIDENT: By publishing in one?

Mr. FISHER: Yes.

The PRESIDENT: That is so.

Mr. FISHER: And still exclude from the United States and all the advantages of the United States' market, every country of the Union.

Mr. FISHER: Exactly, and that difficulty has been accentuated in Canada by the practice of English authors and publishers securing the American copyright and throwing the Canadian market into the bargain. That of course is not necessary, but it has been the practice of British authors and publishers, and is a sore grievance to the people of Canada. That is a practice which of course can be discontinued at any moment that the British authors and publishers choose to discontinue it; but under the present condition of the law they have that power and they exercise it, and our people feel it is a sore grievance.

LORD TENNYSON: It ought to be discontinued.

Mr. FISHER: It ought to be discontinued, but that is one of the chief reasons why we wish to retain the right to legally discontinue it if they do not do it voluntarily.

The PRESIDENT: That is a point which, as Mr. Fisher knows (he mentioned it the other day to me and Sir Hubert), we have considered. It is Article 6, which I will just read, of the Berlin Revised Convention, which is as follows: "Authors 'not being subjects or citizens of one of the countries of the Union, who first 'publish their works in one of those countries, shall enjoy in that country' (that is a Union country) 'the same rights as native authors, and in the other countries 'of the Union the rights granted by the present Convention.'" The result is that an American author can publish (and publication is not necessarily printing; at least it is so only to a very limited extent) in England and then get his full rights, although he belongs to a non-Union country, in England, Canada, and elsewhere. We have been discussing this question at the Board of Trade, and it had occurred to us that it is a very serious position, and that it may be necessary possibly in a ratification, if we ratified, to ratify subject to this article not applying as regards Great Britain and the Empire.

Mr. ASKWITH: Or a modification of it, because there is the question of an alien being resident in a country of the Union.

The PRESIDENT: Yes. The difficulty rather was this, that if we reserved this Article 6, as under the Berne Convention, Article 3, the same matter is dealt with, how far we should be much better off than we are at the present moment by falling back on the Berne Convention. It might be necessary under those circumstances to denounce the Berne Convention as well, which would put us also in a difficult position. I only throw this out to show the difficulty of the position. We admit the grievance is a very real one, and, I think Mr. Fisher will agree, is the chief reason why Canada, quite apart from the general constitutional position, desires to pass her own Acts of Parliament. That is the actual crux, the real reason why she may probably have to put some different clauses in to the other Dominions.

Mr. FISHER: Yes.

The PRESIDENT: That would be met if we reserved the Article as a whole, so that we were not bound by that Article as a whole, or some modification of it at all events.

Mr. FISHER: We have been rather disposed to read the original Berne Convention as covering this point also; but I am not prepared to give a legal opinion upon it.

Sir H. LLEWELLYN SMITH: It does not make things any worse, but it does not make them any better unless we were able to take up the line that Article 6 is intended to refer to alien authors who are domiciled in a Union country, although not citizens and subjects thereof.

Mr. ASKWITH: That would be on the lines of Lord Cranworth's and Lord Chelmsford's opinion as contrary to that of Lords Cairns and Westbury.

The PRESIDENT: An alien living here is rather a different matter.

Mr. FISHER: That is not so much the point we are speaking of. There is the alien living in his own country.

Sir H. LLEWELLYN SMITH: As a possible reservation we might say that we ratified on the understanding that Article 6 was intended to apply only.

The PRESIDENT: To aliens not being subjects or citizens but being actually living in a Union country; and for all practical purposes that would not affect you.

Sir H. LLEWELLYN-SMITH: Do you think they would accept a reservation of that kind?

Mr. LAW: I am inclined to think they would; but is there not some way of getting round it? What is an author? because, under the Convention, an author is anyone who possesses the rights of the author. Could he, being the person to whom the copyright was transferred, claim, as he was domiciled or as he was a native, the copyright? I suppose not.

Mr. TEMPLE FRANKS: The necessity for residence might be got over very easily by some illusory residence; "domicile" is an extremely difficult thing to prove in law.

The PRESIDENT: This may save our time. I think we are all agreed. I gather the delegates are agreed that we ought, if possible, to meet this point. We will consider it between now and some subsequent meeting of the Conference, and suggest certain words; and perhaps Mr. Law will see to that.

Mr. LAW: Yes.

The PRESIDENT: That is why I ventured to ask you, Mr. Fisher, to give a practical instance in which you thought Canada might have to make certain reservations, or make her legislation somewhat different to others, because I wanted to see what were the points on which we could all agree. Have you any other particular point, Mr. Fisher, in your mind?

Mr. FISHER: Of course, I am presuming, from the general discussion on Lord Tennyson's proposition, that the present Imperial Act of 1842 would be repealed?

The PRESIDENT: That is so.

Mr. FISHER: And a new position would be created with reference to the self-governing Dominions, and I am quite satisfied with that. I must say with regard to



the suggestion that the Imperial Act should apply to the self-governing Dominions without action on their part, that I consider it much more desirable that the Imperial Act shall apply to the self-governing Dominions after positive action on the part of the legislature of the self-governing Dominions, rather than that it should apply first and they require to repudiate it. I think it would be an unfortunate situation that a self-governing Dominion should be called upon to repudiate Imperial legislation. It would be a much better mode of procedure, I think, that they should take definite action to make it apply within their bounds than that they should take definite action to repudiate it. I do not like the onus being thrown on the Parliament of a self-governing Dominion of repudiation of an Imperial Act. I think that would be an undesirable and unfortunate situation.

Mr. HALL JONES: And it might be misconstrued.

Mr. FISHER: It might be misconstrued. If the Imperial Act were to apply to the self-governing Dominions consequent upon legislation in their various Parliaments (I quite coincide with Lord Tennyson's views that no self-governing Dominion will elect to stay out), then the action would be much more consonant I think with not only their own dignity, but with the Imperial relations all round, than that they should repudiate the Imperial legislation, if by any chance they had to do so.

Sir H. LLEWELLYN SMITH: Could it not be in the alternative; that it should be left to the Responsible Government of each Dominion to declare whether or not the Imperial legislation should extend to it, and if they considered it desirable to pass an Act of Parliament for the purpose they would? The method would be left to each.

Mr. FISHER: I think under your Bill you would have to include the provision either that it should apply automatically or that it should apply consequent upon local legislation.

Sir H. LLEWELLYN SMITH: Or consequent upon the declaration of the Responsible Government, it being left to them whether they would think it necessary to pass legislation or not.

Mr. FISHER: I do not quite see how you could draft a provision that it should apply, unless you made it apply consequent upon the action of the self-governing Dominion.

Sir RICHARD SOLOMON: By a resolution of Parliament.

Sir H. LLEWELLYN SMITH: I think as a drafting point the thing could be met. I was only anxious to meet the case of Canada and also to meet the case of other Dominions who did not feel the same difficulty, and who were prepared by a declaration of the Government to say that they wished this Act to apply. I think on the drafting point probably it would involve an Order in Council with the provision that no such Order in Council should be issued except on the application of the Responsible Government. They could apply it without consulting their legislature if they chose.

Mr. FISHER: Do you mean proclamation by the King in Council here?

Sir RICHARD SOLOMON: By the Governor in Council. I was going to suggest this, if I might be allowed, that the Imperial Act should not extend expressly to any self-governing Colony, but might contain a provision enabling the Governor in Council of the self-governing Colony to put the Act in force in the Colony. I do not think any Government of a self-governing Colony would advise the Governor to issue a proclamation of that kind until it had got a resolution passed by, say, both Houses of Parliament authorising it to do so. Then you would have the intervention both of the Government of the self-governing Colony and the Parliament of the self-

governing Colony. I think that is a proposal myself that might be accepted, and I say so for this reason, that at the last Imperial Conference here of Prime Ministers I know the present Prime Minister of the Transvaal, General Botha, brought forward a similar resolution with regard to having a uniform naturalisation of aliens law throughout His Majesty's Dominions, and that proposal suggested that there should be an Imperial Act passed and that any self-governing Colony could put that Act into force by a proclamation of the Governor in Council. That proposal of his was supported by the other Prime Ministers of South Africa, and I do not think, so far as I remember, it was objected to by any of the Prime Ministers.

Sir H. LLEWELLYN SMITH: What would be the position of any Dominion that did not put it into force?

Sir RICHARD SOLOMON: That Colony would of course be free to pass its own legislation on identical lines with the Imperial Act, but my proposal provides simple machinery for bringing about the same object.

Sir H. LLEWELLYN SMITH: Would the existing Imperial Acts go on?

Sir RICHARD SOLOMON: No, they would be repealed by the new Imperial Act.

Mr. HALL JONES: The present law should continue there.

Sir EDWARD MORRIS: It seems to me that that proposition would not get over the case of Mr. Fisher because it practically means giving the Governor in Council in Canada the power to legislate for Canada; in other words it would give the Governor in Council the power to pass a copyright law for the Dominion of Canada.

Sir RICHARD SOLOMON: Would the Governor take that responsibility without a resolution passed by Parliament?

Sir EDWARD MORRIS: If you put into this Imperial Act a power for the Governor in Council in Canada to put that Act in force in Canada, it would give the Governor in Council the power to legislate for Canada.

Mr. FISHER: Quite so, and also it would imply that the Imperial legislation had force in Canada.

Sir EDWARD MORRIS: I make that suggestion merely to meet the point raised by you—the constitutional point—because the point you have made is this, that this is an entirely local matter, this question of copyright, because Canada and nearly all the other Dominions have passed legislation on this question of copyright and they all regard it as purely a local matter.

Sir RICHARD SOLOMON: The whole object is to get uniformity, which you might not get if you are to have concurrent legislation. If Canada is going to pass its own legislation—on the lines of the Imperial Act it is true; if South Africa is to pass its legislation on the lines of the Imperial legislation, and Australia is to do the same thing, you are bound to have differences on vital principles, and you impair uniformity at once.

Sir EDWARD MORRIS: As Mr. Fisher lays that proposition down, is it not important that that should be recognised before you go any further?

Sir RICHARD SOLOMON: There should be a recommendation from Parliament.

Mr. FISHER: Is it not the fact that in the International Union that condition of affairs prevails? In the International Union the effort is to harmonise the legislation of the different countries. It does not necessarily make the legislation in all the



different countries absolutely identical at all. They do not differ in essentials which are agreed to in the International Convention, but they can adopt any further provisions they choose each in their own countries and by their own legislation. That is exactly the principle I am contending for.

Sir H. LLEWELLYN SMITH: As long as they are not repugnant.

Mr. FISHER: As long as they are not repugnant, of course.

Sir RICHARD SOLOMON: In the despatch of 11th May 1907 from the Secretary of State to the Governors of the self-governing Dominions it was proposed that each Colony might pass its own legislation adopting the Imperial Act; but obviously the Secretary of State for the Colonies was aware of the fact that there might be modifications made in the Imperial Acts by the Colonial Parliaments, and there was consequently a provision that if a Colonial Parliament passed an Act modifying the Imperial Act, that should be a reserved Act; and there was at once a tremendous outcry about that.

The PRESIDENT: What I think we want and what I think we are all agreed on is that where a Colony is prepared to accept the Imperial Act it should accept it without necessarily varying legislation, that is to say, accept it as a whole (I am speaking from the point of view of uniformity), that the Dominion that desires should be able to accept the Imperial Act as a whole without any alteration whatever. On the other hand, there are other Dominions, of which, at all events, Canada is one, which, in accepting the Act, might desire to make certain modifications for local reasons. I understood your suggestion, Sir Richard, as regards the first case, at all events, was that it required some form of assent. As I understood the suggestion which Mr. Hall Jones made, it would be rather repugnant to the various Dominions to say that: "If you wish to stand outside you will have to pass a special Act," and so on; that might be rather invidious, the suggestion being that in some way or other they should signify their assent. Your suggestion, I understand, with regard to those Dominions which desired to accept the Act as a whole, is that the assent should be signified by proclamation of the Governor in Council?

Sir RICHARD SOLOMON: Yes.

The PRESIDENT: Whereas, I take it, where any alteration would be made, that form of procedure would not do; because, I take it, from what Sir Edward said, you could not have by a proclamation of the Governor in Council an Imperial Act accepted with any modifications.

Sir RICHARD SOLOMON: Certainly not.

The PRESIDENT: Therefore, the two positions would be, in the one case, acceptance by proclamation of the Governor in Council, and, in the other, by an Act passed by the legislature where any modifications were necessary: is that the proposal?

Mr. FISHER: That was not at all my proposal.

The PRESIDENT: But what you are rather coming to?

Mr. FISHER: That is what I understand Lord Tennyson's proposal to be, and on behalf of Canada I can only say that the Government of Canada, I cannot believe, for a moment, would issue a proclamation on the authority of an Imperial Act. It seems to me, that the Governor in Council of Canada can only issue a proclamation in Canada on the authority of the Parliament of Canada. So that, as far as our procedure is concerned, the Governor in Council would have to proceed to lay a Bill before the House, and pass it by the Parliament of Canada before we could do anything.

Mr. ASKWITH: Is it not the function of the Government itself, to decide what it will do? The Responsible Government decides whether it will do it by proclamation or otherwise.

Mr. FISHER: In a sense, perhaps, but at the same time, from a constitutional point of view, I should say it was their only procedure.

Mr. ASKWITH: I am afraid they would be acting *ultra vires* unless they acted in that way.

Mr. FISHER: I am quite sure that in Canada they would not be satisfied with any other course.

Sir H. LLEWELLYN SMITH: I gathered from Mr. Fisher that the method of proclamation by the Governor in Council would meet the case of Canada, because he says that no Governor would proclaim an Act in Canada except by the authority of the Canadian Parliament.

Mr. FISHER: I cannot conceive of their doing so.

Sir H. LLEWELLYN SMITH: At all events, he would only proclaim it on the advice of the responsible ministry; it would lie with them, would it not?

Mr. FISHER: Yes. The point I raise is—it is a matter the rest of you may not sympathise with—that no Act could give the Governor in Council of Canada that power except an Act of the Canadian Parliament. I may not have the sympathy of everybody in that, but that is our view of the constitutional situation.

Mr. ASKWITH: Mr. Fisher's point is that the Imperial Government would not have power to say that the Governor in Council of Canada shall do it?

Mr. FISHER: That is so.

Sir RICHARD SOLOMON: In that case should the Imperial Act say anything at all about the self-governing Colonies? They should leave the whole of the Colonies out entirely.

The PRESIDENT: That would surely be a pity.

Sir RICHARD SOLOMON: Mr. Fisher says that in Canada they would object to an Imperial Act giving any authority to the Canadian Government to proclaim that the Act was in force there.

The PRESIDENT: Without an Act.

Sir RICHARD SOLOMON: Without an Act.

The PRESIDENT: I take it that in South Africa you would not think that was so, and you would think it could be done there without an Act. I understand with regard to Canada, it is a question of susceptibilities rather more than a question of the legal position. They would not do it because they would not wish to do it without an Act; or do you think they could not do it without an Act?

Mr. FISHER: I do not think the people of Canada would like to recognise their power of doing it without an Act.

The PRESIDENT: That is what I call their susceptibilities.

Sir RICHARD SOLOMON: Even in South Africa I think they would do it by proclamation, but they would not do it by proclamation merely on the authority of the Imperial Act; they would go to their own Parliament and ask Parliament to pass a resolution to give them the power; so that there would be the intervention of the Colonial Parliament.



The PRESIDENT: It would probably be a Resolution and not an Act.

Sir RICHARD SOLOMON: You would have a Resolution of the Colonial Parliament.

The PRESIDENT: Take the case of the Union. If they desired to accept an Imperial Act as a whole, they would pass some Resolution—they would not go to the trouble of a Bill which also might lead to want of uniformity, amendments, and so on—"that the Imperial Act be hereby accepted and proclaimed by the Governor in Council."

Sir RICHARD SOLOMON: Something of that sort.

The PRESIDENT: That probably would cover the constitutional position, would it not? I do not say it would cover Canada, because obviously, from what Mr. Fisher has said, they would prefer to pass an Act. But it would cover the constitutional position generally.

Mr. FISHER: I do not think it would absolutely; at the same time it is reaching near that point.

Mr. LAW: Could it be put this way—by Act or by Addresses moved by both Houses?

Mr. FISHER: I do not think it would be advisable to indicate in the Imperial Act the procedure to be followed in a self-governing Dominion.

Sir H. LLEWELLYN SMITH: You must throw the responsibility on the responsible Governments there.

Sir RICHARD SOLOMON: I think the Imperial Act should give the power to proclaim the Act in force in the Colony; otherwise how could you do it? You could not make the law in the Colony by mere Resolution of Parliament; you must pass an Act. If the Imperial Act says you can proclaim the Act in force in the Colony, you may be perfectly certain the responsible Government will not authorise its proclamation unless fortified by a Resolution of Parliament.

Sir H. LLEWELLYN SMITH: Supposing in the third Resolution here, the proviso read something like this: "Provided that the Act shall not apply to any Responsible Government Dominion in which it has not been proclaimed by the Governor in Council," would not that really get over the point?

Mr. HALL JONES: It does not get over Mr. Fisher's point of the proclamation being issued under the Imperial Act in the Colony.

Sir H. LLEWELLYN SMITH: I understood it would.

Mr. HALL JONES: It seems to me the simplest way is to strike out the word "not."

The PRESIDENT: You have a possible alternative: "Provided that every Responsible Government Dominion shall have power by Act of its legislature or by proclamation of the Governor in Council to declare." That does not quite meet it.

Mr. HALL JONES: I think the other is better.

Mr. LAW: Or by a Joint Resolution of the two Houses.

Sir H. LLEWELLYN SMITH: You would prefer that there should be no reference to proclamation or any method?

Mr. FISHER: I would prefer that. Of course I do not wish to speak for anybody except Canada; I am afraid I am perhaps harping a little on the constitutional rights, but I cannot get away from them very well, because they are keenly felt by us, and

I do not like to include in any Imperial Act the principle or idea that that Act should confer on the Government of a self-governing Dominion powers.

The PRESIDENT: Would you mind repeating that, Mr. Fisher.

Mr. FISHER: I do not like to see included in an Imperial Act a clause which apparently confers powers on the Government of a self-governing Dominion directly. That is a practical modification of our Charter by the Imperial Act. The British North America Act lays down what the Governor in Council of Canada can do, and I do not like to change that.

Sir EDWARD MORRIS: It seems to me, Mr. President, that as far as you will probably be able to go with an Act of this character would be something on the principle of the Merchant Shipping Act.

Mr. HALL JONES: What would eventuate?

Sir EDWARD MORRIS: That would simply mean that any Dominion might by Act of Parliament avail themselves of the provisions of the Act. That is how the Merchant Shipping Act has been adopted in most of the Colonies, and that is probably the most comprehensive measure.

Mr. HALL JONES: But some of the provisions are mandatory.

Sir EDWARD MORRIS: I am coming to that. In Canada they practically re-enacted the law; they took the Merchant Shipping Act and re-enacted it; and that has been the policy pursued by Canada and a great many other Dominions with the Merchant Shipping Act, the Fugitive Offenders Act, the Trades Union Act and all these Acts—they take the Imperial Act and practically re-enact it.

Mr. FISHER: But the Imperial Act prevails if Canada do not re-enact it.

Sir EDWARD MORRIS: Yes.

Mr. FISHER: Or if they wished to enact any legislation which in any way conflicted with it the Imperial Act would have force.

Sir EDWARD MORRIS: Precisely, or they have power to amend it.

Sir H. LLEWELLYN SMITH: Not anything that is repugnant to it—to supplement it.

Sir EDWARD MORRIS: To supplement it by further legislation.

Sir H. LLEWELLYN SMITH: You could not repeal it and you could not amend it.

Sir EDWARD MORRIS: They might repeal it in so far as it affected Canada.

Sir H. LLEWELLYN SMITH: I do not think so, Sir Edward; I do not agree with you there—in some parts and not others; certain parts of the Merchant Shipping Act run throughout the Empire, and they cannot be repealed by local legislation.

Mr. FISHER: That is practically the situation to-day with regard to copyright, and that is what we wish to see changed.

Sir H. LLEWELLYN SMITH: It looks to me on Mr. Hall Jones's proposal that putting in "whether or not" instead of omitting the "not" would be better.

Mr. HALL JONES: I think it should be definite, either that they should or should not.



The PRESIDENT: You mean that there should be no option.

Mr. HALL JONES: No option.

The PRESIDENT: There is a great deal to be said for that.

Mr. HALL JONES: I want to avoid any difference of treatment of Imperial law by the self-governing Dominions. Some might accept it as it was, and others might wish to alter it; and if you had it laid down definitely that it should or should not extend, you have something defined. I must confess that I have come to the opinion that I should like the Resolution as well with the word "not" deleted.

Mr. ASKWITH: You would cut out the words "by Act of its Legislature" and not define any method by which the procedure would be carried out.

Sir RICHARD SOLOMON: How would it read then?

The PRESIDENT: "Provided that every Responsible Government Dominion should have power to declare that the Imperial Act should extend to that Dominion."

Mr. HALL JONES: That is right.

Sir EDWARD MORRIS: There would be no object in putting that in.

Sir RICHARD SOLOMON: They could do that without a proposal of that kind.

Sir THOMAS RALEIGH: It is inconsistent with No. 2 if you are to pass that.

Sir RICHARD SOLOMON: I do not see how my proposal prejudices Canada in the very least. Canada can pass a Resolution without any authority from the Imperial Government.

The PRESIDENT: I understand Mr. Fisher's point is not that it prejudices Canada, but it raises a question as to the powers of the Governor in Council; and that has all been very carefully settled by various Acts, and it would be a mistake to raise any question at the present moment with regard to quite another matter like copyright as to their powers. I think there is a great deal of force in that. Is not that your point?

Mr. FISHER: That is my point.

The PRESIDENT: Mr. Hall Jones, in your suggestion are you proposing to leave out the words "by Act of its Legislature"?

Mr. HALL JONES: It is immaterial—"should have power to declare," it might be by Resolution even, as suggested by Sir Richard Solomon. I would prefer to leave it with just the deletion of the word "not."

The PRESIDENT: Are you omitting the words "by Act of its Legislature"?

Mr. HALL JONES: I am retaining those words.

Sir H. LLEWELLYN SMITH: If some Dominion said they thought that a Resolution was sufficient why should we say it was not?

Mr. HALL JONES: A Resolution means a debate, because in those questions you would have difference of opinion. A Bill does not mean more than that—you go through the ordinary form of First, Second, and Third Reading in each House.

LORD TENNYSON: Why should you not say "or otherwise"?

The PRESIDENT: I am afraid, Mr. Hall Jones, I must dissent from that. It may be so in New Zealand but it is not so here, as you would find if you said so to a Whip or any member of the Government.

Mr. HALL JONES: The procedure with a Bill in Parliament is that it has to go through its First, Second, and Third Reading. A Resolution is more simple, because notice of motion having been given, one debate may finish the whole matter.

The PRESIDENT: That is what I should be afraid of if it was necessary to have an Act—that in some cases pressure of time would be so great that you could not do it.

Sir H. LLEWELLYN SMITH: If in some cases they are content with a Resolution, why should we decide otherwise?

Mr. ASKWITH: Surely if you lay down that the procedure is to be by an Act of the Legislature you are impinging upon the very principle that Mr. Fisher is contending against—you lay down the procedure.

Mr. HALL JONES: You must not lose sight of the fact that this clause 3 is not part of a Bill; it is only a general indication of the lines that we wish taken.

Sir H. LLEWELLYN SMITH: It will have to be put into a Bill.

Mr. HALL JONES: We put it in to give effect to what we think fair, but certainly not in that language.

Mr. TEMPLE FRANKS: Your proposal would make it necessary to omit No. 2 altogether.

Mr. HALL JONES: Not at all, because then your Bill would be empowered to include all parts of the Empire.

Mr. TEMPLE FRANKS: Then if the Act was express in its terms, that it extended to all the British Possessions, do you want a provision that a responsible Government should declare that it should extend?

Mr. HALL JONES: That would be to include the Crown Colonies. You must not lose sight of the fact that you have only a skeleton in the Imperial Copyright Act—you have the essentials of the Imperial Copyright. I do not know, Sir Richard, whether a Resolution of Parliament would be "an Act of the Legislature."

Sir RICHARD SOLOMON: I do not think an Imperial Act ought to provide anything about Resolutions of Parliament, and so forth. My opinion is that the Imperial Act should give power to the Governor in Council of any self-governing Colony to issue a Proclamation putting the Act in force. I do not think the Government of the Colony will take the responsibility of advising that the Governor should do so until they get the consent of their Parliament, but that should be left to them. Unless you have a provision of that kind in the Imperial Act, a Colony that wished to put the whole of the Act in force by Proclamation alone could not do so. They must do it by Act of Parliament.

Mr. HALL JONES: This suggestion simply informs the countries we represent that we have safeguarded their interests. We have made provision so that they can do one or the other; they can pass an Act or pass a Resolution either to come in or stand out. This itself is only a guide in framing a Bill. It is not mandatory for the whole of the Empire, but each self-governing Dominion can either contract itself out or contract itself in.

Sir H. LLEWELLYN SMITH: What do you think of this red ink alteration?

Mr. FISHER: I do not like the alternative.



Mr. HALL JONES: How does it read?

The PRESIDENT: "Provided that every Responsible Government Dominion should have power to declare whether or not the Imperial Act should extend to that Dominion."

Mr. HALL JONES: I am content to accept that, only I think it would be better to have it direct.

Mr. FISHER: I am thinking only about some wording, but at present I have not got it quite in a condition to read out; something of this kind strikes me, that the third clause should read, "Provided that the Imperial Act should not extend to any Dominion having a responsible Government unless and until adopted by such Dominion."

Sir EDWARD MORRIS: There would be no necessity for that because it would not apply at all. That would not go into the Act because the Law Officer of the Crown would rule that out; he would simply say there is no necessity for that because it does not apply, and any Imperial Act in relation to copyright will not apply to the Colonies. There can be no question on that point because all the Colonies and Dominions have passed laws in relation to copyright and are revising them every day as one of the matters provided under the constitution.

Mr. FISHER: But unfortunately at the present moment the Imperial Act of 1842 does apply.

Sir EDWARD MORRIS: Yes, that is for a different reason, but what I mean is this, that you can pass a copyright law to-morrow in Canada, and you are quite within your rights under the British North America Act to do so. For instance, to-morrow under your Revenue Act you have powers in relation to copyright to exclude or admit certain books or to do anything you like. That is my opinion, of course with all due respect.

The PRESIDENT: How would you suggest it should run, Mr. Fisher?

Mr. FISHER: As I say, I am not quite sure that these are actually the words I would like to use, but this is the idea: "Provided that the Imperial Act should not extend to any Dominion having a responsible Government unless and until adopted by such Dominion" or "by the Legislature of such Dominion."

The PRESIDENT: The only point of criticism I make upon that is, what does "adopted" mean? Does it necessarily mean an Act of Parliament?

Sir EDWARD MORRIS: He means that it shall not come into force.

The PRESIDENT: Would it involve an Act of Parliament?

Sir RICHARD SOLOMON: It must involve an Act of Parliament.

Sir EDWARD MORRIS: You should put in "Shall not apply."

The PRESIDENT: I am afraid it would necessarily mean an Act of Parliament.

Mr. FISHER: That would be my own preference.

The PRESIDENT: I do not think it is the preference of the others.

Sir EDWARD MORRIS: Would it not be better to make clear first that law point? Do you not think you ought to have advice first on the law point as to whether such words should find a place in such an Act? You say, "Provided this Act shall not apply." Now there is no point in putting that into the Act unless there is a necessity. If my contention is correct there is no necessity for the words there because it would not apply.

Sir H. LLEWELLYN SMITH: These words are general words, laying down principles, but when it comes to be drafted and put into an Act—

Sir EDWARD MORRIS: Yes, I know, but I am speaking generally as to the principle, because you see impliedly you say that would apply to Canada if it was not for that saving clause. That is what you say in the Act; impliedly you say this would be the law in Canada if we did not put in this reservation clause you now propose to put in. I say, in my opinion, in any case it would not apply, because that is one of the powers of the Dominion Parliament—to pass a law in relation to copyright as regards itself, not as regards England or any other country.

Mr. FISHER: I think you are right, Sir Edward, unless there is in the Act itself a clause making it apply to the Empire, but the Imperial Parliament probably, legally—or they seem to think so—have the power to make any of their laws apply to the whole Empire.

Sir EDWARD MORRIS: That may be, but that is not inconsistent with the proposition I lay down. What I mean is that you cannot be a party to a section in an Act which impliedly lays down the principle of lessening your powers.

Mr. FISHER: I see your point quite.

Sir EDWARD MORRIS: If your contention is correct.

The PRESIDENT: I should like to know what "adopted" means. For you yourselves obviously in Canada "adoption" would mean by Act of Parliament, but some of the other Dominions, I take it, would prefer to assent without the trouble in the first place of an Act of Parliament, and secondly, without opening the door to the modifications which the Act of Parliament possibly leads to. The only criticism I have on your words, which otherwise I like, is whether the word "adopted" would not be taken to mean that it was necessary to enact assent everywhere. We want some other words which would mean adoption by Act of Parliament in one case and a simpler form of adoption in another.

Sir H. LLEWELLYN SMITH: We might say, "Except with the assent of the Dominion."

Mr. TEMPLE FRANKS: "Legally expressed."

Mr. LIDDELL: I do not think they could adopt it in any other way as a matter of fact.

Mr. HALL JONES: Then you would want an interpretation clause to say what "assent" means.

Sir H. LLEWELLYN SMITH: This Resolution is not an Act of Parliament.

The PRESIDENT: I really think, Mr. Fisher, we are more or less agreed as to what we should desire, it is rather a question of words and it is a little difficult to draft them now; but, meanwhile, I should like to ask Sir Thomas Raleigh, representing the India Office, if he has any observations to make with regard to the matter.

Sir THOMAS RALEIGH: Mr. President, I think with Lord Tennyson's approval, I should like to move that words be added to No. 3 of his motion. The proviso as drawn here affords no protection to India, and I hope to convince the Conference that India does require some protection. We have no desire at all to keep India outside the scope of the proposals which will be discussed at this Board. The Government of India has followed in copyright matters the legislation of the United Kingdom, and I think they are quite aware of the advantages to be hoped for from uniformity and simplicity in the law, and quite willing to take their part in securing those benefits for the future. But the difference between India and other parts of the Empire is this, that when we are dealing with the Dominions we are dealing with societies of



men whose customs and habits are in the main identical with those of Englishmen. The professional interests connected with literature and art and the drama are organised in the same way in a self-governing Colony as they are organised here, and the same difficulties arise, the same causes of litigation, and so on. Therefore, there is no insuperable difficulty in applying the same code of law, if we may call it so, to the Colonies and to England.

In India we are dealing with a vast population, in the main composed of men whose customs and habits are not those of Englishmen, and although we have in that country interests of the same nature as those which are protected by copyright laws here, and although we must not leave these interests out of sight, we must also take into account the fact that there are indigenous forms of literature and the drama, which have never come within the purview of our laws at all, and to which it would probably not be expedient to apply the elaborate code of your European law. On a general assurance that the Government of India are prepared to follow in the line of uniformity as soon and as completely as they can, I should like to reserve for them considerable liberty in detail. If this Imperial Copyright Act is comprehensive, as no doubt it will be, it is tolerably certain to contain a good deal which is not applicable to India under the present conditions of the country, and in order to reserve for the Government that liberty, and not in the least to postpone or evade any question of uniformity of law as between India and the rest of the Empire, I should like to add these words: "Provided also that the extension of the Imperial Act to India shall be made in such manner and to such extent as may be found suitable to the needs and circumstances of the people."

Mr. ASKWITH: Has India found any difficulty in the past, because she has been under the present Imperial Act ever since the Convention of Berne?

Sir THOMAS RALEIGH: There has been very little litigation about copyrights in India, and I take it the administration of the law has not been attended by great difficulties.

The PRESIDENT: We might just have your amendment typed and circulated after luncheon. I think we had better adjourn for luncheon now.

I think we have arrived at the question of what the Conference would like to do. If we settle the constitutional question and the Indian question, the next question that arises is the question of heads and of details. There seem to be two views with regard to that. Lord Tennyson, I understand, would prefer not to discuss details but to accept the Convention as a whole. Sir Richard desires to see the principal heads at all events of these questions and to discuss them, and perhaps I might just say this— from my point of view, by which I mean His Majesty's Government—we are not prepared to accept absolutely every one of the propositions of the Berlin Convention without at all events further discussion. With regard to one or two of them, I think we shall clearly have to make reservations. With regard to one or two others our mind is still open, but we should like to discuss them, and I confess I think it would be of advantage, as this is to be an Imperial Act consented to, as we hope, by the various Dominions, that some of the broader propositions, some of the larger questions, should be discussed by us now in order, if possible, to arrive at a conclusion with regard to them.

I will just mention three or four. The first one is the general proposition of copyright, which combines two matters which are new to the English law; one is whether it should run from the date of publication or whether it should be for life and for a certain number of years afterwards, and secondly, what that number of years afterwards should be. Our present copyright system is life and 7 years, or 42 years, whichever is longer. This question does not actually form part of the Berlin Convention, that is to say, it is a reserved matter in any case, but it is a matter I think we ought to discuss.

The next question is as to the abolition of formalities, which is material to the Berlin Convention. It abolishes practically all formalities. In England we have very complex and difficult questions arising out of formalities, and I think we ought to consider that and see how far we can go—whether we can go completely to the abolition of all formalities, or whether under certain circumstances and conditions with regard to certain copyrights, we must not still preserve a certain amount of formalities.

The third point is the addition of adaptations, translations, abridgments and so on, which are now to be given copyright in a way they have not enjoyed it before—adaptations, arrangements of music, and other reproductions in an altered form of a literary or artistic work and so on. That is a point we could consider—how far we can assent to that, and whether there are any difficulties in the way.

The fourth point is a question which is quite new to English law, although it is included in a certain number of the Acts of other countries—how far buildings should be copyrighted.

Then there is also the question of the reproduction of music and other matters by mechanical machines, like gramophones, and so on—how far these ought to have some protection by copyright.

There are several minor matters, but those I think are the ones I would suggest, if we are to discuss details. We clearly ought to discuss them to see if we can arrive at some conclusions about them, either with unanimity among ourselves, or agreement as to how far we can accept the Berlin Convention in regard to them. I suggest that we might consider how far the Conference as a whole desires to discuss the details or not.

Mr. FISHER: I would like to ask what the arrangements are about the reporting.

The PRESIDENT: What we have done, and what I believe is always done on these occasions, is that we have two shorthand writers who are taking down all that is said, and their reports will be treated as confidential until the Conference agrees to their publication, and in any case any member of the Conference is at liberty to make the ordinary corrections and clearly at liberty to strike out anything which he thinks it would be inexpedient to have published.

Mr. FISHER: The shorthand report will be submitted to each member for his remarks, and in the meantime nothing will be given out to the public?

The PRESIDENT: That is so; nothing certainly from the point of view of what has occurred here; probably just the fact that the Conference has met, but certainly nothing that has occurred.

Sir H. LEWELLYN SMITH: We might have a short paragraph just saying that the Conference has met, who were present, and so on. The Secretary can draw something up and submit it this afternoon.

After a short adjournment.

The PRESIDENT: I do not know whether the Conference would like to further consider what we have been discussing unofficially—the wording of the Resolution—or whether as regards the point we were last discussing before luncheon, they would like to postpone it until to-morrow with a view to considering it further. The last words suggested, which seemed to me to meet with more general approval than any others, were these: "Provided that the Act should not extend to any responsible self-governing Dominion except with the assent of such Dominion." That I understand Mr. Fisher would be prepared to consider, at all events. To those words I do not think you have any objection, Lord Tennyson?

LORD TENNYSON: I have no objection to those words.

The PRESIDENT: Shall we provisionally accept those and have them circulated before to-morrow and see how they look when they are typed?

Mr. FISHER: There is just one point in that connection, if I may raise it. I hope it is thoroughly understood, but I would like to make it perfectly clear, that in any such Act it would be clearly defined that the present laws which are repealed



shall still be repealed, even though the Act is not assented to by any of the self-governing Dominions—that is to say that the Imperial Act of 1842 shall be repealed without any limitation.

The PRESIDENT: As regards the Imperial Act, that certainly will be so; that is to say, that in any Imperial Act that we pass all the previous Statutes will be repealed, and therefore, so far as any Dominion adopts these, either by Act of Parliament or in some other way, it would involve the repeal of the whole of the existing Statutes, the Act of 1842 and others. The question of what will be the position of a particular Dominion which did not adopt the Act is not so easy—I think that is a point we ought to consider. We have a suggested wording here to meet that point. Will you read your words, Sir Hubert?

Sir H. LLEWELLYN SMITH: The point is this, that it is clear that any responsible self-governing Dominion which elected not to adopt the new Imperial Act would wish to have freedom to pass its own Act, though it might be inconsistent with and repeal or amend the existing Imperial Acts.

Mr. FISHER: Quite so.

Sir H. LLEWELLYN SMITH: That could be met, but it could not be done by a simple repeal, because that, in the interval before a Dominion Act was passed filling the hiatus, would leave the Dominion with no Copyright Acts and incapable therefore of fulfilling its obligations under the Berne Convention by which for the moment it is bound. May I read out some words that I have prepared that might possibly meet that point?

Mr. FISHER: Might I just ask a further question on what you have said? You say it would leave a hiatus in which there would be no Copyright Law in that Dominion.

Sir H. LLEWELLYN SMITH: No Copyright Law fulfilling the conditions of the Berne Convention to which the Dominion is already bound. That is what I mean. These are only words suggested for discussion: "As from the date at which the new Imperial Act takes effect the existing Imperial Copyright Acts will be repealed so far as regards the parts of the Empire to which the new Act applies, and any responsible self-governing Dominion not adopting the new Act may by Act of its Legislature amend or repeal the existing Imperial Acts so far as relates to that Dominion, subject to treaty obligations."

Mr. FISHER: Something of that kind would be quite necessary.

The PRESIDENT: We will have that circulated also.

Sir H. LLEWELLYN SMITH: The "subject to treaty obligations" gives the 12 months.

Mr. FISHER: That is necessary, I think.

The PRESIDENT: The notice under the Berne Convention must be given.

Mr. FISHER: Yes, that seems to me quite right.

The PRESIDENT: Shall we take it that these Resolutions are for the moment suspended and that we will circulate one or two suggestions made in connection with them and discuss them to-morrow finally? I would also rather suggest whether it might not be well in connection with these Resolutions—I will suggest some words directly—that the first Resolution of all should express a desire, as far as possible, for uniformity—something, I mean, rather to indicate to any Dominion, which does find for any reason it has to legislate, that it should as far as possible, as far as its own local circumstances are concerned, come into uniformity with the Imperial Act.

Mr. FISHER: Yes.

The PRESIDENT: The Conference have now to decide how far we shall discuss preliminarily—we cannot decide it to-day—those one or two headings to which I referred before luncheon, which are of importance, and as to which I should be glad if we could come to some arrangement, so as to obtain again uniformity, as far as we can. Perhaps the simplest way will be, if the Conference agree, to take the Convention which you have printed here in this paper Article by Article and deal with those Articles which are of importance, omitting matters of less importance. It is at page 36 of the Appendix to the Report of the Departmental Committee. I think perhaps we had better have a preliminary talk about these points without attempting finally to decide them to-day, and then members will be able to think them over before to-morrow.

The first point is on page 36, Article 1; there is nothing on that. As to Article 2, the additions are printed in thick black type and there are two points in connection with this Article. It is giving to the acting form of pantomimes, and so on, a copyright which it does not at present possess, that is to say, something which need not necessarily be words but which may be acting directions and so on, is given copyright. It is really dumb-show which is given the copyright, and I do not know whether that is a point of sufficient importance for us to discuss here, or whether you would be prepared to leave it for us to consider. I should like to know if anybody has any views about it.

LORD TENNYSON: Does that include music-hall turns?

The PRESIDENT: I suppose it would.

LORD TENNYSON: I do not think it can.

Mr. ASKWITH: Some music-hall turns are in dumb-show and are "fixed in writing."

Sir H. LLEWELLYN-SMITH: "Or otherwise."

Mr. ASKWITH: That point, I suppose, is not of the slightest importance to the British Empire. It is a matter of great importance to Italy and Germany and arises on piracies which take place, such as the piracies of such pieces as "L'Enfant Prodigue," or the opera of "Coppelia," and the ballet in "Aida"; they asked for it to be introduced because they considered that a large amount of brain power and large sums of money have been expended upon these kind of productions, and it was a work of creation that Italians particularly affect and which to a certain extent has its origin in very ancient history, in Punch and Judy, but they would consider it rather a matter of, not jealousy exactly, but want of consideration if the British Empire chose to throw out their pet desire.

The PRESIDENT: We might consider that.

Sir H. LLEWELLYN SMITH: There is a point earlier in this—it is not put in leaded type—that is the extension of the words "whatever may be the mode or form of its reproduction," those are words that might be read in two ways. If read in one way they are a very big extension of the existing copyright.

The PRESIDENT: Mr. Askwith, what view did the Committee take on that—that it was not a great extension?

Mr. ASKWITH: They took it as a reproduction of the words in Article 4 of the Berne Convention, "which can be published by any mode of impression or reproduction whatever."

Sir H. LLEWELLYN SMITH: That is to say it is intended to mean: "whatever be the mode or form of its production," without the "re."

Mr. ASKWITH: Yes.



Sir H. LLEWELLYN SMITH: That is how we understand it, but if it meant in whatever mode it might be reproduced it would in fact be a very big extension of the existing copyright law, for instance the photograph of a building, if we include "Architecture."

The PRESIDENT: As to these points, I take it whatever our interpretation is we should embody them in our Imperial Act. Our interpretation of them is a limited one, that it does not really extend the Berne Convention. In that case in our Bill we should put it in that form. And to that extent only we should be bound by it and that you would agree with.

LORD TENNYSON: May I read the note of the Attorney-General of Australia upon this dated 16th February 1910?

The PRESIDENT: Yes.

LORD TENNYSON: What he says as to Choreographic Works and Pantomimes is this: "The inclusion of these in the law of copyright appears to me to be open to much question. I take it that the intention of the Convention extends only to set pieces of a definitely dramatic character, and not to minor performances in the nature of music-hall turns, though the wording is by no means clear. But even so, I foresee great difficulties in the application of the copyright law to mere action and dumb-shows, even though 'fixed' in writing or otherwise, and I doubt the public utility of giving the author of such works the protection of the copyright law with all the attendant difficulties of determining what constitutes an infringement of the law." Of course he did not contemplate the Italian desire for it.

The PRESIDENT: I thought if it suited the convenience of members of the Conference, on none of these points we are raising now could we come to any decision to-day; I am only raising them rather to see what the arguments are, and to-morrow we can consider them more fully. We suggest that in drawing our Act we should draw it, if we can, to imply that, as regards the power of reproduction, it is not an extension of the existing Berne Convention.

The next point is with regard to architecture. This is an entirely new point in English law, although it exists in the case of France and Germany.

Sir H. LLEWELLYN SMITH: The word "design" is a mistranslation for the French word "dessin"; it ought to be drawing.

The PRESIDENT: Under the Convention the idea is to give copyright to the building itself. At present the architect is secure in his plans and designs, which are copyrighted against any infringement, for which he could prosecute and obtain damages, but he has no rights in the building itself. The proposal of the Convention is that the actual building, so far as that building is original in any part or in the whole, should be protected by a copyright and receive the same term of copyright as other matters. It is quite a new departure, and I should rather like to know what the views of the members are upon that.

Mr. HALL JONES: Plans are protected now.

The PRESIDENT: Plans and designs are protected. This is to protect the actual building itself—that nobody shall be able to imitate a building, or any part of it, after it is actually constructed, for the term of copyright.

Mr. HALL JONES: They could not do that without encroaching upon rights connected with the plans.

Mr. ASKWITH: Yes, they may. Perhaps there, again, I might shortly sum up the point: that if you leave out architecture, you isolate and leave out one of the great divisions of artistic work and show the cold shoulder to it. Further, if you leave it out you object to the inclusion of architecture, which is much desired by the French, Belgian, and Danish Governments, who have all had cases in their courts where infringement of architecture has been visited by penalties, varying according

to the kind of piracy, upon the delinquents; and you further throw, to a certain extent, cold water upon the British delegates who received instructions, if they were convinced by the arguments that were used at Berlin, to include the admission to architecture; and you also throw, to a certain extent, cold water upon the opinion of the Committee which went into this at very great length and heard all the evidence of the different architects and of Monsieur Mailland, who represented France and showed what difficulties there have been in France in the matter, the Committee, with the exception of one gentleman, reporting in favour of the inclusion of architecture under the general protection.

LORD TENNYSON: May I read a note that I have from the Attorney-General of Australia dated 28th February 1910?

The PRESIDENT: Yes.

LORD TENNYSON: He says that he is in agreement with the views of Mr. Scrutton and Mr. Trevor Williams. At the same time he says that they "do not suggest that any of the above points" (that is objections to the comprehensive protection of architecture and choreography and such like things) "are of such outstanding importance as to prevent the acceptance by the Commonwealth, for the purposes of Imperial Copyright, of whatever decision is come to by the Imperial Government." They only submit that I should place on record the views of the Government.

Sir H. LLEWELLYN SMITH: That is, the view of Mr. Scrutton being against—

LORD TENNYSON: That much was outside the scope of copyright.

Mr. ASKWITH: Mr. Scrutton was against it on the ground of the difficulty of the remedies for infringement.

The PRESIDENT: There are three minority reports on this particular point which I might read.

LORD TENNYSON: Mr. Joynson-Hicks?

The PRESIDENT: Yes, Mr. Joynson-Hicks says: "The extension of copyright to architecture itself apart from the actual plans from which the subject-matter of the architecture is built is an entire innovation, and one, I venture to suggest, exceedingly difficult to carry out in practice, and one which might be very detrimental to the progress of building construction. Every century sees an advance in the methods of building construction—witness, for instance, the steel framework and the ferro-concrete buildings of the last few years—and if the form of the building is to be the subject of a 50 years copyright" (that does not matter—x years copyright we can put it) "I see no reason why the method or material should not be the subject of a patent for an equal term. In effect, it seems to me that if the provisions of the Berlin Convention had been in existence from the beginning of history, they would have tended to prevent improvements in architecture to the detriment of the public and without any commensurate advantage to the author"; and Mr. Scrutton says "I have a strong view against the inclusion of architecture as a subject-matter of protection. I see great difficulties in the trial of what are new and original houses or features of houses, and equal difficulties in the remedies for infringement; and I agree with the view of the Commissioners of 1878, that architecture should not be included."

Mr. ASKWITH: On page 9 you will find the Report of the Committee in favour of it.

The PRESIDENT: I will read that directly. Then Mr. Trevor Williams says: "I do not agree with the recommendation that architecture be accepted as matter to be protected. Plans and drawings are already fully protected; to protect the building itself under copyright law appears to be impracticable." (See Report, Royal Commission, 1878, para. 125-127.) "Evidence given before the Committee has in no way satisfied me to the contrary. Buildings are invariably designed and



" erected to order, and the architect is remunerated by commission on cost. The building when erected belongs to the client, and copyright protection, if granted, should also belong to the client. No evidence was given before the Committee by owners of buildings of any abuse of the existing law, and I do not think that the granting of copyright will redress any real grievance whatever."

Mr. ASKWITH: And look at page 30, in the first paragraph of Mr. Joynson Hicks' Report.

Mr. LAW: He also speaks of the material, but I do not know whether the material has anything to do with it.

The PRESIDENT: No, his point is that if you protect a building as a whole you ought equally, I understand, to protect the material. I will now read the recommendation of the Committee.

Mr. ASKWITH: That is at page 9, the 5th paragraph, with regard to architecture.

The PRESIDENT: This is what the majority say: "With regard to architecture, it is to be observed that in giving protection to actual works of architecture as opposed to plans made to guide the architect in his work, the Revised Convention goes beyond British law, which forbids copying plans of a building, but not copying the building itself. Plans and models appear to come under the head of 'literary and artistic works,' and as to them there has been no dissentient evidence given, nor any difference of opinion in the Committee. The evidence as to buildings themselves has been somewhat conflicting, but the Committee were much impressed by that of M. Maillard. It is clear that if the Revised Convention is to be followed with regard to works of architecture, the scope of British law must be enlarged. The Committee, by a large majority, have come to the conclusion, after due consideration of the evidence, that it is desirable to recommend that architecture be accepted as matter to be protected, both for the sake of uniformity and because it deserves to be protected, and presents no difference in principle from that applicable to the sister arts. They further consider that protection should be given against copying buildings whether by use of plans or otherwise, and against use of drawings or models for other purposes than those authorised, and by other persons than those supplied therewith. With regard to the term 'architecture,' the Committee gather that the object of the article is to protect works of original and artistic character, and not works of common type which have been frequently produced on previous occasions. There may possibly be difficulties of proof of infringement, but this does not affect the principle. There may be difficulties as to remedies. Damages might not be technically provable, and destruction not permissible, as buildings are usually not the property of the infringer; but penalties might be awarded against anyone who copies or is a party to copying. It may be pointed out that the Royal Commissioners of 1878 did not consider that it would be practicable to give this protection which is now suggested to architects; but after hearing the evidence, and understanding that no difficulty in affording this protection has been found in other countries, the Committee have formed a different opinion, and their conclusion is in favour of the adoption of Article 2 in this respect."

Mr. ASKWITH: And at page 6 of the correspondence respecting the Revised Convention of Berlin there is the Report of the British Delegates.

The PRESIDENT: There is a report that there has been no difficulty in administration. This is from the Report of the British Delegates at the Berlin Conference: "In regard to works of architecture, we were convinced by the arguments advanced by M. de Borchgrave, one of the Belgian delegates, that the protection of works of architecture, as apart from the plans, &c., from which such works are constructed, is perfectly feasible. He cited two cases, of which a note is given below, where in the first case judgment was given in favour of the defendant on the ground that the work he had apparently copied had no original character or artistic merit such as to entitle it to protection; in the second case judgment was given for the plaintiff,

" who had designed and built a château which had been copied by the defendant. In the latter case the work was deemed to possess the qualities of originality and artistic merit." Those are the opinions and counter-opinions of members of the Committee and of the Conference. I do not know whether anyone at the present moment would wish to make any observations in regard to that: Mr. Fisher, have you anything to say about it.

Mr. FISHER: I confess I have rather sympathised with the view that there are great difficulties in accepting architecture. I would not like to say I would absolutely dissent if that was the one thing in which I differed from the recommendations, but it seems to me almost as if the architect whose plans or drawings were protected had sufficient protection without the building itself being protected.

The PRESIDENT: I have a preliminary observation about these details; although the shorthand writer is taking it down it is quite clear that our discussions upon these should not be published, especially if I am to express any views; I might express a view here and then have to defend exactly the opposite in the House of Commons.

Sir H. LLEWELLYN SMITH: Provisionally they should be taken down.

The PRESIDENT: Certainly, but it is clear our discussion upon these should not be published. Lord Tennyson, you have read your Attorney General's opinion; do you agree with him or—I will not ask you that—do you want to add anything to it?

LORD TENNYSON: I do not, except that I think it is very important that on the main principles we should fall into line with a country like Germany or France if we can.

Sir H. LLEWELLYN SMITH: I think there is a real danger if there are not some limiting words or some explanatory words that it may impinge upon the law of patents. The work of the architect is not only a work of art, but, of course, it involves questions of technique and methods and processes, and so forth, which are the subjects if anything of protection by patents which have a much shorter period of protection. We ought not by a side wind to give to some particular method of building construction a much longer protection than you would give to any other method of industry.

Mr. ASKWITH: The introduction of steel girders, for instance, ought not to be protected.

Sir H. LLEWELLYN SMITH: I wonder if we could limit the thing to make it clear that if a work of architecture is protected under the copyright law it is only in respect of the originality of its artistic form and not in respect of the materials, processes, or methods in which the construction is carried out. I gather from Mr. Askwith, who was at Berlin, that that would be in harmony with the intention of the framers of the Convention. I am afraid that the words as they stand would go a good deal beyond that. I do not know whether that would meet your difficulty. There are works of architecture which are works of art; there is no doubt about it.

Mr. ASKWITH: The Committee also say: "With regard to the term 'architecture,' the Committee gather that the object of the article is to protect works of original and artistic character, and not works of common type."

Sir H. LLEWELLYN SMITH: I said original and artistic.

Mr. ASKWITH: Yes.

Sir H. LLEWELLYN SMITH: I think it is only *quod* artistic work and nothing else that copyright would come in.



Mr. TEMPLE FRANKS: There is also the Designs Law. It is conceivable that it might overlap with that. You might have a design for a façade or a frieze. I think it should be made clear as regards both patents and designs.

Mr. HALL JONES: Does not the copyright of a plan cover that?

Mr. TEMPLE FRANKS: No. I think the present copyright of a plan, so far as I understand, is only for the mere reproduction of the plan itself—not in any concrete form at all. It is a mere copying of the plan.

The PRESIDENT: You mean the utilisation of the plan is not an infringement of the copyright; it is only the mere writing down.

Mr. TEMPLE FRANKS: Yes.

The PRESIDENT: I am bound to say I am rather against this proposal. If it is introduced I should have to defend it in the House, and I should find it difficult to know how to defend it. It seems to me that buildings are in rather a different category from ordinary works of art, and so on. The architect is paid for his work at once and receives his reward at once, and my real difficulty is as to the practicability—my mind is open on the subject, and I agree with Lord Tennyson that one ought, as far as possible, to avoid any reservations—but I do not quite see how it is to work at all. I do not see who is to decide what is really original in the building either in part or in the whole, and I am inclined to think it might be considerably in restraint of public advantage if there was this restriction of it. I think there would be great difficulty, as Mr. Joynson-Hicks points out, as between the owner and the architect, because I should think no building was ever designed or built without the owner having some considerable voice in it, modifying or suggesting the design of the architect, and that it would be very difficult to distinguish as between the rights of the two. I very much doubt whether a building as a whole is so often copied as to justify this very considerable extension of copyright, and, at all events, I think it is quite clear, as Sir Hubert has said, that we must limit it to what is purely in the nature of artistic merit, and not a question of process or material.

Mr. ASKWITH: If you limit it to that, that would satisfy the Berlin Convention—you are not to throw it out altogether or boycott it as an artistic creation which ought not to be protected.

Mr. TEMPLE FRANKS: Something might be done quite apart from the copyright law in giving more stringent protection against the improper use of drawings or models. That is one great grievance.

The PRESIDENT: That appears to me to be a way in which you could deal with it. How far is that suggested by the Convention?

Mr. TEMPLE FRANKS: It is suggested by the Committee's Report.

The PRESIDENT: Is there any wording in the Convention which would enable one to say that was so?

Mr. TEMPLE FRANKS: Hardly that; they deal only with copyright.

The PRESIDENT: You mean that we could put it into our own Act.

Mr. TEMPLE FRANKS: It would be something rather distinct from copyright. It would not be so much protection of the copyright, but it would be another remedy against the improper use of plans and drawings which had been submitted for certain purposes. That is one great grievance of architects quite apart from any question of the copyrighting of their original designs.

The PRESIDENT: That would come into any Act.

Mr. TEMPLE FRANKS: We could bring it, no doubt, into the Copyright Law.

Mr. LAW: Could they register their designs?

Mr. TEMPLE FRANKS: I think it is quite conceivable; you could certainly allow registration of a design for the exterior of a building. It would be very difficult to register the proportions of an interior.

Mr. LAW: The great grievance on the part of the architects is, that although they get the commission on one building—it may be a very small building, and the commission in that respect is after all only a certain percentage, and amounts to a very small sum—the architect looks to building a large number of cottages on the same plan, and somebody seeing the first cottage takes a photograph of it and goes all round it, and in and out of it, probably while it is being built, and can go and build a lot of other cottages on the same plan, and robs this man of the work of his own brain and his own art, and the architect himself gets about 5*l.* for a building which is reproduced all over the country. I believe that has occurred in the neighbourhood of Hampstead.

Mr. TEMPLE FRANKS: It would be very difficult to do that without the real plans.

Mr. LAW: I do not know whether you read the evidence, but the evidence there was that you could do it; I must say at first I did not see how it was possible, but a great deal of evidence was given on behalf of architects that you could do it.

Mr. TEMPLE FRANKS: I thought they all agreed more or less that you would have to reduce them to a certain definite plan.

Mr. LAW: But without copying the original plans—without getting the plans of the original architect.

The PRESIDENT: But as to Mr. Frank's suggestion that the plans should receive greater protection than they do at present, that would meet that objection, and possibly that is the best way of doing it. We will consider that and go on to the next point, page 37—this is to a certain extent an extension of the present copyright: "adaptations, arrangements of music, and other reproductions in an altered form of a literary or artistic work, as well as collections of different works, shall be protected as original works, without prejudice to the rights of the author of the original works." The point of that, as I understand it, is this, that the author has his original work, someone else adapts it or alters it to a certain extent, in which adaptation or reproduction there is some original work, and so far as there is original work in the adaptation or reproduction, or whatever it may be, that original work is copyright and cannot be pirated by anyone else. The difficulty of the point is how you are to define original work. The Committee considered that this would clearly only apply where there was original work. Some members of the minority, Mr. Joynson-Hicks among others,—I think two of them—took the view that under this wording it would enable anyone by a very slight rearrangement or adaptation to practically pirate the work of the author, and then to obtain protection against a sub-pirate. If that is so I think it ought not to be done, and I think in any Bill we pass we should make it quite clear that this would only apply to cases where there was really original work in connection with the matter, and that only that original work should be protected from piracy.

Mr. ASKWITH: That is the view of a large majority of the Committee on page 10 in the second paragraph: "The large majority of the Committee were in favour of adopting the paragraph on the basis that it was not intended to protect the matters mentioned except in so far as they present the character of new and original works."

Sir RICHARD SOLOMON: Is not that your present law?



The PRESIDENT: Yes, but it requires a great deal of originality to get a fresh copyright. I think we ought to make it quite clear that that is the intention. A pirate ought not to be protected against another pirate if he is a pirate, in my opinion.

Mr. LAW: There is such a thing as innocent piracy. A man may not take out his copyright; he may take no interest in it; he produces his work and does not care, and then somebody knowing this has practically, although not legally, fallen into the public domain, takes it up, turns it about, and makes a more or less new work of it; then somebody else comes along and robs him of his originality in this innocent piracy.

The PRESIDENT: Surely that comes in again in the extent to which there is original work. I do not think it matters that the man is the original author and has taken out his copyright or not; it is a question whether it is original or not. If we can draw up words to meet it, that is not objectionable; otherwise I think it is very objectionable.

Article 4—this is a very important point at the middle of page 33; it is practically the abolition of formalities. In England we have formalities, and some of them of a very complicated nature. The Convention of Berlin proposes the abolition practically of all formalities. It is a very important point. I do not know whether you have anything to say upon that, Mr. Franks.

Mr. TEMPLE FRANKS: It appears to me that what one has to consider is the possibility of formalities giving you very considerable and very important evidence as to the author's rights, and if you are extending the area or duration of copyright to any great extent it will be extremely difficult, without some record, for anyone who desires to reproduce something in any shape or form to have any authentic document to which they can refer to ascertain the original author's copyright, either in art or literature, or whatever it may be. That, I think, is the principal point which is urged in favour of formalities in America. With regard to Canada, I suppose formalities are something more even than that. They are the actual condition of the existence of the copyright, certainly in published works; for instance, the publication on the actual title page is, I think, required of the date, author, and of the fact that it has been registered.

Mr. FISHER: Yes, at the registration office.

Mr. TEMPLE FRANKS: I think that is perhaps the main point: to protect the man who desires innocently, and probably for the advantage of the community, to reproduce works, whether works of art or works of literature.

The PRESIDENT: I might, perhaps, read what the Committee said with regard to this in supporting the abolition of formalities. I think you were unanimous on it.

Mr. ASKWITH: We were unanimous.

The PRESIDENT: There was no dissent?

Mr. ASKWITH: No.

The PRESIDENT: "On general principles there seems to be no reason why owners of copyright should be required to comply with formalities which are not imposed in most other cases of ownership of personal property. Anyone who copies the products of an author's genius ought to be taken to be doing so at his own risk. The present requirements of British law as to registration are anomalous, uncertain, and productive of great disadvantage and annoyance to authors with little or no advantage to the public. In some cases registration is required as a condition of suing, in others it is not; in some cases proceedings can be taken for infringements committed prior to registration, in others they cannot." They go on to say: "The Committee fail to see what advantage to the public can be expected from systems of registration which are particularly onerous in the case of foreign authors, and if abolished for them should equally be abolished for authors of our own country."

Mr. TEMPLE FRANKS: I think that it ought, perhaps, to be observed that the Copyright Commissioners of 1878 were also unanimously in favour of a more stringent form of registration.

Mr. ASKWITH: I was not correct in saying that none of the Commissioners objected to the formalities. Mr. Williams on page 33 did.

The PRESIDENT: One of them dissented.

Mr. TEMPLE FRANKS: Yes, I see, and does not Mr. Joynson-Hicks point out that formalities really concern the public, and that it is very difficult, if not impossible, to get public evidence as to the value?

The PRESIDENT: I do not think he is against it as far as I remember.

Mr. TEMPLE FRANKS: The Copyright Commissioners of 1878, of course, would make formalities, registration, and so on, necessary, and they would abolish anomalies, which exist now; with regard to our own registration here, they would have put them on a simplified and perfectly consistent basis.

Mr. FISHER: I think any form of registration ought to be as simple as possible, but I must say I sympathise very much with the expressions you have just given with regard to the necessity, or the advantage, of some form of registration, leaving aside, for the moment, any further formalities such as we have in Canada. On general principles, I think that some form of record of the fact of copyright being given or existing is of the first importance.

The PRESIDENT: You mean as a record of where the copyright began?

Mr. FISHER: Yes, partly that, and as a record of the existence of the copyright. The principle under this Convention is that anybody producing anything, does it at his own risk as to whether it is infringing any other copyright or not—he must take his chance of that. He may do it quite innocently, and yet infringe another copyright. If there is a record of that copyright he has a much better opportunity of knowing whether he is infringing anybody's rights or not, and the public at large also have the opportunity of knowing what rights there are, which without formality they have not.

Mr. ASKWITH: If you get the period of life plus  $x$  you get a very simple method of determining whether the copyright still exists. You would certainly have books published with lists of authors, just as you have directories giving where people live, stating whether they were dead or not, and from the date of death you can calculate the  $x$ .

Mr. FISHER: Is it not better that that should be done in some official way by a recognised authority?

Mr. ASKWITH: You put the onus on the producer and also the necessity of search on the supposed infringer, and you bring in a requirement which prevents almost any acceptance of the Convention of Berlin.

Sir H. LLEWELLYN SMITH: I would like to point out that the Convention only provides that the enjoyment and the exercise of these rights shall not be subject to the performance of any formality, that is to say the existence of copyright shall not depend on the fact of registration, but it would still be possible, if desirable, in any particular case to enact that you should not be able to get damages for infringement unless the thing had been registered. That would perhaps meet your point, Mr. Fisher.

Mr. FISHER: I do not think that would meet it.

The PRESIDENT: The innocent man should not be hit.



Mr. ASKWITH: At the present time copyright exists irrespective of registration, and if a man wants to sue, all he has to do is to register the very day he issues the writ.

Sir H. LLEWELLYN SMITH: We do attach importance to the fact that the copyright shall not flow from the act of registration—that the right should be independent of it, but whether the man should be able to get damages unless it is registered is another thing. It would be quite consistent with the Convention that he should be able to stop it by injunction but not able to get damages. When you get to unsigned engravings it is very serious.

Sir RICHARD SOLOMON: I suppose this is one of the matters on which a self-governing colony could modify the Imperial Act with regard to their own copyright.

Sir H. LLEWELLYN SMITH: I do not think the Dominion could be a party to the Convention and yet refuse to protect a French copyright without registration in Canada.

Sir RICHARD SOLOMON: I did not mean that; I mean with regard to local copyright they could insist on registration there.

Sir H. LLEWELLYN SMITH: I suppose so.

Mr. HALL JONES: The local man would get his advantage there.

Sir H. LLEWELLYN SMITH: You mean when the thing is first published in the Dominion.

Sir RICHARD SOLOMON: Yes.

Sir H. LLEWELLYN SMITH: Certainly it would be possible as far as the Convention is concerned, only you would be imposing more onerous conditions on your natives than on foreigners.

Sir RICHARD SOLOMON: Yes, and that is why I am in favour of the recommendation of the Committee.

LORD TENNYSON: How would the Convention treat a book that was not published under the author's name?

Sir H. LLEWELLYN SMITH: That is specially provided for in connection with anonymous works at the bottom of page 39.

The PRESIDENT: I think he can get copyright when he chooses to publish under his name, but he gets just the  $x$  years from the time it was first published; is not that so?

Sir H. LLEWELLYN SMITH: I do not think he gets as much as that; it is left entirely to the law of the country. But we have to draft the law of the country.

The PRESIDENT: I said  $x$  years, which is the law of the country.

Sir H. LLEWELLYN SMITH: Each country may have its own law.

The PRESIDENT: That would be  $x$  years.

Sir H. LLEWELLYN SMITH: My point was that when we come to drafting the Imperial copyright law, which we hope will be adopted by other parts of the Empire, we have to define what shall be the law of the country. The Convention leaves it open.

Sir RICHARD SOLOMON: In such an Act you will not require any formalities to be observed.

Sir H. LLEWELLYN SMITH: Supposing we adopted the principle that for an anonymous work the author should have 50 years, or whatever it was, from the date of production, that almost implies the necessity of registration. It does reintroduce formalities for anonymous works.

The PRESIDENT: There would have to be certain formalities in certain cases. The question is how far we should be in favour of the abolition of formalities.

Then the next part of it has yet to be considered—publication. The Article states "in the case of unpublished works, the country to which the author belongs; in the case of published works, the country of first publication." That is within the Union. That I think is right. Then the next Article is Article 6, which we have already dealt with and propose to consider further; that is, if I may call it so, the Canadian Article, or rather the anti-Canadian Article.

Now we come to a very important point, and that divides itself into two—Article 7—the length of the term of copyright, and the time from which it shall date. The present British law with regard to copyright for books—the Imperial Act—is life and seven years or 42 years, whichever is the longer. It is now proposed, under this Convention, although it is not an absolute obligation on those who join it, it is suggested that in every case the term should be something plus the life—that in every case it should be for life plus a certain  $x$  number of years afterwards. The proposal of the Convention is 50 years, and it is a very serious question as to what we should adopt it—whether, in the first place, we should adopt the principle to take life plus  $x$  years as the basis, and, in that case, what should be the  $x$  years after death.

I am bound to say, if I might just give my own view with regard to the first point, that I think the arguments used by the Committee are conclusive with regard to the advantages of taking  $x$  number of years after life, rather than life and any other term from publication. At present when a book is published there is this great disadvantage in the case of books which last or are of any value—books with any period of life—that it so often happens that the first edition is published, and subsequent to that there are a very considerable number of further and improved editions, and under the present system of copyright the first, and therefore the less mature and complete, edition comes into the market first—the copyright disappears and anybody then can print it; and the result is that very often first editions which are not the result of the final desires or work of the author of books or even other works, are republished, which from the literary point of view is, of course, bad. I believe the "In Memoriam" case, Lord Tennyson, is just a case in point.

LORD TENNYSON: Yes.

The PRESIDENT: That is just a case in which the arguments are strong in favour of taking the life as a whole and adding to it a certain number of years, so that all the works of the author cease to be copyright at the same moment. In the first place they can then be published as a whole, and, secondly, the author's best work is published instead of, very possibly, his less good work. Do you agree with that general proposition about life?

LORD TENNYSON: Yes, Sir.

The PRESIDENT: Mr. Fisher, have you any views upon that?

Mr. FISHER: I have no strong views, except that I think the term is a very long one.

The PRESIDENT: I am not speaking of the term, but supposing it was only one year after life—whether it should start with life *plus* a certain number of years.

Mr. FISHER: Yes, I quite agree with that.

LORD TENNYSON: I hope you will not say one year.

The PRESIDENT:  $x$ , as I say. Now the next question is the term of years. Perhaps you would not mind, Lord Tennyson, as you have read it in other cases, reading your Attorney-General's opinion.



LORD TENNYSON: I received a cable on February 15th as follows:—"If United Kingdom and other countries Copyright Union agree extension 50 years, unlikely Commonwealth would not accept alteration." The Attorney-General wrote last February: "While recognising the strong trend of continental opinion in favour of it, I think the extended term is excessive, especially in view of the doubtful suggestions to extend copyright to performances in dumb show and works of architecture." If the articles on architecture and dumb show were less comprehensive for us there would, I imagine, be little difficulty about accepting the life and 50 years for literature, music, and painting, judging from a reply to a cable of mine of April 6th, 1910, from the Prime Minister: "It will be sufficient if you place on record views of this Government, which is prepared to accept whatever decision arrived at in the matter, subject to opportunity being afforded Commonwealth considering details of proposed Imperial Bill."

The PRESIDENT: The position, I think, is this. Perhaps I had better read the opinion of the Berlin Conference delegates: "The question of duration of copyright must form the chief ground of discussion in any proposed amendment of our law. It is, consequently, most important that this question should be carefully examined. In any such examination it should be borne in mind that, from the international point of view, it is at present impossible to secure uniformity of duration for any period other than life and 50 years, inasmuch as the majority of the States of the Union have already adopted that period and cannot take away what has already been granted. A term of life and 30 years, which has been proposed as a period for which British copyright might be given, would be useless for the purpose of international agreement, besides curtailing the term of copyright under the existing law for all books published in the last 12 years of an author's life"; and "So far as regards the international aspect of the question, we are of opinion that no other term than 50 years would be practicable or valuable." The present periods are life and 80 years, Spain; life and 50 years, Belgium, Denmark, France, Luxembourg, Monaco, and Norway; life and 30 years, Germany, Japan and Switzerland; Italy is life or 40 years; America is 28 years, subject to a further registration which gives another 28 under certain conditions. The Committee who have inquired into the Convention report by a majority in favour of 50 years.

Sir H. LLEWELLYN SMITH: They also go beyond that; they report that where a book is the joint work of two people it should be the life of the younger plus 50 years.

Sir THOMAS RALEIGH: The life of the younger or of the one who dies latest?

The PRESIDENT: The life of the one that dies latest; that may mean 100 years.

Sir H. LLEWELLYN SMITH: Yes, the life of the one who dies latest.

The PRESIDENT: Sir Richard, have you any views on this point?

Sir RICHARD SOLOMON: No, not at all.

LORD TENNYSON: I think that authors and artists feel very properly that their own creations are more real property than anything else, and the longer you can give them freedom from legalised plunder the fairer. This is really the view of the authors, artists, and musicians.

The PRESIDENT: I ought perhaps to have added, as I was quoting the authorities, that the Royal Commission of 1878 recommended 30 years—life and 30 years.

Mr. ASKWITH: But they added that for the sake of international agreement they would recommend a different term.

The PRESIDENT: Sir Thomas, have you any views specially on the length of term?

Sir THOMAS RALEIGH: I acquiesce in the opinions; they are so strong; I have not formed an opinion of my own about it.

The PRESIDENT: You go by authority?

Sir THOMAS RALEIGH: Yes.

Sir RICHARD SOLOMON: Would existing works get the benefit by that extension?

The PRESIDENT: Yes, under certain conditions.

LORD TENNYSON: Those that are under copyright now?

The PRESIDENT: Yes, under certain conditions. If I may express my own view about it, I confess that when I saw 50 years it rather shocked me, and I have to look at it from the point of view of the House of Commons. I have first to look at it from the point of view of my colleagues in the Cabinet, as these points would have to go to them; but there is also the House of Commons, and I find great difficulty in believing that such a very long term as that would be acceptable. It is not 50 years as a maximum, but it really means 50 years and the life, and that might mean almost 100 years in the case of some books. I expect in the case of some of your father's books, Lord Tennyson, it would have meant 100 years nearly, and that seems to me a very excessive period.

Mr. ASKWITH: It would have to be a very precocious author who could get 100 years out of it.

The PRESIDENT: Say 80 years; it is a very very long term, and I have great doubts as to whether it would be acceptable to the House of Commons—whether it would not give rise to a very great deal of opposition, and possibly jeopardise to a certain extent the Bill as a whole. I would rather have suggested some term which would be generally acceptable, such as that suggested by the Royal Commission of 30 years, rather than this. I do not look upon it exactly as a matter of principle; I look upon it from the point of view of what would be acceptable. On the other hand, from the point of view of principle, at the present moment we give our patentees, who after all are exercising their brains, 15 years as a maximum, and in many cases they have been put to much greater expense, and in some ways, I venture to say, even in the presence of Lord Tennyson, they are more useful.

LORD TENNYSON: Hardly so original. Other inventors would have found out your patentee's invention or something similar.

The PRESIDENT: Sometimes I think—not always; and they only get 14 years apart from any question of life.

Mr. TEMPLE FRANKS: And they pay 100l. for the patent.

The PRESIDENT: Yes.

Mr. LAW: The longer term in the case of patents checks the development of industry, so that there is a reason for a short term for the patents which does not exist for copyright.

Mr. TEMPLE FRANKS: It might check the circulation of literary works.

The PRESIDENT: Wait a moment. This copyright is going to apply to all sorts of things; it is going to protect gramophones and other things for 50 years; it is not only to apply to books but to a great many other things as well. I agree there is a difference between them, but there is this very great discrepancy, and I do feel very great doubts as to how far it would be accepted by the House of Commons.

Mr. FISHER: Under the new Convention it applies to photographs, which are very largely mechanical, and to a number of other things which are but slightly intellectual, if at all.



The PRESIDENT: I confess, if we could have distinguished between books and some of these other things, it would have been advantageous; but that, I take it, is contrary to general principles.

Mr. TEMPLE FRANKS: It would be possible.

The PRESIDENT: This Article 7 is to apply to all.

Mr. LAW: The most extreme feature of the Convention or the Report of the Committee is giving the copyright to gramophone records. That is the most extreme one.

Mr. TEMPLE FRANKS: There is no reason in the Convention why we should not discriminate by giving choreographic works life and five years perhaps.

Mr. ASKWITH: There is no advantage in discriminating and giving dozens of terms of copyright for different things. I do not suppose that one choreographic work would be the subject of copyright in the United Kingdom probably in a couple of hundred years; it is not worth the ink that is used in printing to take the trouble to do it.

Mr. TEMPLE FRANKS: Unless you create a demand in connection with other classes of invention by the increased term. Take some of these other things that you give copyright to now, works of geography, topography, or science, if you give them life and 50 years, inventors may come along and say, "We also ought to have life and 50 years for our patents"; and can you distinguish between the principles upon which you legislate in the two cases?

The PRESIDENT: I think we will consider this point further to-morrow. Article 9 is newspapers, "with the exception of serial stories and tales, any newspaper article may be reproduced by another newspaper unless the reproduction thereof is expressly forbidden."

Mr. ASKWITH: The only difference is as regards articles as between one newspaper and another.

The PRESIDENT: There is no protection for the articles, is there?

Mr. ASKWITH: It is quite a small point really.

The PRESIDENT: Then No. 10 there is nothing in. No. 11, that is new, is it not? That is the performance. It gives copyright to the public performance of musical works. I do not think there will be any objection to that.

Sir H. LLEWELLYN SMITH: It is a considerable change, of course, because at present you can perform any musical work unless there is a notice on the musical work that the rights are reserved. This abolishes the necessity for that.

Mr. ASKWITH: This is what was called the Wall point.

The PRESIDENT: "In order to enjoy the protection of the present article, authors shall not be bound in publishing their works to forbid the public representation or performance thereof." This is really the abolition of formalities again.

Mr. ASKWITH: Yes.

The PRESIDENT: Is there any objection to it; is it a thing which is likely to raise difficulty?

Mr. ASKWITH: I do not think so. What has been recognised by all the musical composers in this country is that musical piracy was not hindered by the notice at all; it was only hindered when the penalties were left in the discretion of the magistrate. Mr. Wall, who had been pocketing 2l. and threatening people for infringement, found when he came before the magistrate that he was given a farthing damages, with the result that his actions ceased.

The PRESIDENT: Perhaps that is not worth raising. Then Article 12—there is nothing in that. Then Article 13 is the Gramophone Article. Mr. Askwith will you explain that?

Mr. ASKWITH: The first line of it is, from the point of view of musical composers, of the very greatest importance to them, because it recognises the right of the musical composer by law to have the exclusive right arising out of the adaptation of works and the public performance of those works. This is an article that will give rise to a great deal of discussion in any Parliament, because of the great power of the Gramophone Company engineered from America, who will state that they have vested interests which would enable them to take any musical composition, on a certain payment to the author certainly, but a payment which should be fixed by law. They put it in the form of a demand for a compulsory licence, on the ground that the existing accidents of the law have allowed them to build up a business on which they have spent money, and, therefore, for all future time they should be entitled to take from musical composers their works upon a payment to be fixed by the State. I know of no provision in English law that subsidises any particular class of traders in that kind of way, or that the Gramophone Company are so weak that they require to be protected in that way, but they seem to have been very powerful in the way they worked things in the United States, because there are an immense number of long clauses in the new United States law dealing with them, and also they have managed to get some arrangement for compulsory licence in the present Bill before the German Reichstag. Germany seems to have solved it upon that basis; but it is quite an anomalous position to bring into English law and was rejected *in toto* by the Committee.

Sir H. LLEWELLYN SMITH: Have the Gramophone Company any power in Canada?

Mr. FISHER: No, our law does not deal with them, and it has not dealt with them at all. It seems to me that there is one objection to dealing with them—that the value of the actual musical composition, in the case of the voice at any rate, depends largely upon the interpreter. A song sung by, say, Caruso is worth a great deal more than the same song—that is a mechanical reproduction of a song—sung by an inferior performer, and yet the music is supposed to be the same.

Mr. LAW: And then there is so much music already in the public domain which the public can sing and which gives equal pleasure to those who hear the records.

The PRESIDENT: There is no doubt this clause in the Bill will give rise to a great deal of difficulty and be opposed by the various interests.

I think these are really all the points of material importance. As to Article 18, I think, Sir Richard, you raised the point as to how far when a work already had copyright it should be benefited by the new extension.

Sir RICHARD SOLOMON: Yes.

The PRESIDENT: This is what it says: "The present Convention shall apply to all works which at the moment of its coming into force" (that is, on the expiry of copyright) "have not yet fallen into the public domain in the country of origin" through the expiration of the term of protection. If, however, through the expiration of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew in that country." So far it has already got a copyright, therefore it comes under the additional protection.



Sir RICHARD SOLOMON: Who will get the benefit of that—the author; or, supposing he has assigned his rights—

LORD TENNYSON: The author—the author's son or his heirs.

The PRESIDENT: Whoever has got a copyright?

Sir RICHARD SOLOMON: I am not so sure of that.

Sir H. LLEWELLYN SMITH: As I understand the Committee's recommendation, the author gets the extended term; but the other people get a sort of compulsory license, do they not?

Sir RICHARD SOLOMON: I understand if the author had assigned his rights, the assignee could claim the benefit of the extension on terms to be agreed upon between them, and if they cannot agree on the terms, somebody is to be appointed by the Board of Trade to decide.

Sir H. LLEWELLYN SMITH: That is the recommendation of the Committee, and there is a new thing there which I am bound to say personally I disagree with altogether. That is at the top of page 44, where it says, "through the expiration of the term of protection." Surely if the thing has fallen into the public domain for any reason it ought not to go back again. I do not know why they put that in.

The PRESIDENT: Do you think they meant that? We will look at and see if it should come out. Where is it that it meets Sir Richard's point?

Sir RICHARD SOLOMON: There is nothing in the Convention about it at all.

Sir H. LLEWELLYN SMITH: The Convention is silent about it; it only says that the rights shall go on; it does not say who shall have them.

The PRESIDENT: We ought to make sure that it goes to the authors; that is to say, if the author has assigned his rights this additional bonus shall not go to the person to whom he has assigned his rights for which he has got no *quid pro quo*. It should go to the author's representatives. That is your point, is it not?

Sir RICHARD SOLOMON: Yes.

Sir H. LLEWELLYN SMITH: But the Committee recommend that if they cannot agree the Board of Trade should decide. That would be you, Mr. Temple Franks. Are you prepared to decide the terms?

Mr. TEMPLE FRANKS: It is a large order.

Mr. LIDDELL: That is a point on which the Colonies would have to have power to modify the Imperial Act.

Sir H. LLEWELLYN SMITH: It is quite clear that the Board of Trade cannot appear in the Act; it would have to be—

Mr. ASKWITH: Someone to be nominated by the Board of Trade.

Sir H. LLEWELLYN SMITH: That cannot be adopted by the Dominions. There will have to be some corresponding authority.

The PRESIDENT: Look at page 17, Sir Richard.

Sir RICHARD SOLOMON: Yes, I have got it.

The PRESIDENT: Who would be the person in the Colonies to represent the Board of Trade?

Mr. HALL JONES: It is your friend, Sir Richard, the Governor in Council; that is a very simple way out of it.

Mr. TEMPLE FRANKS: Yes, it would be the corresponding Government Department.

The PRESIDENT: I think those are all the points.

Mr. FISHER: There are some words in Article 15, on page 43, which indicate the maintenance or continuance of formalities: "In order that the authors of works "protected by the present Convention may, in the absence of proof to the contrary, "be considered as such, and be consequently admitted to institute proceedings against "pirates before the courts of the various countries of the Union, it will be sufficient "that their name be indicated on the work in the accustomed manner." That rather implies, at all events, that the formality of printing the name upon the work is to be maintained.

The PRESIDENT: That is no alteration.

Mr. FISHER: That is no alteration, but that would be inconsistent with the other clause which provides for the disappearance of all formalities.

Sir H. LLEWELLYN SMITH: On the other hand, Mr. Fisher, it is rather implied in Article 7 that anonymous and pseudonymous works do not enjoy the same benefit as others; and therefore I would say that this Article determined what indication of authorship should take the thing out of the category of being anonymous and make it a signed thing, and it is sufficient that the name should be indicated in the accustomed manner.

The PRESIDENT: You mean it depends upon Article 7?

Mr. ASKWITH: It depends on the law of the country; it leaves you a free hand to do what you like.

Mr. TEMPLE FRANKS: But it does look as if Article 15 applied not only to anonymous works.

Sir H. LLEWELLYN SMITH: The first paragraph of Article 15 says what works shall not be deemed to be anonymous, and then the second paragraph deals with anonymous or pseudonymous works; I think the two have to go together.

The PRESIDENT: It applies to what you might call the anonymous section of it; they have to cease to be anonymous.

Sir H. LLEWELLYN SMITH: Yes, if they are signed in the accustomed manner.

Mr. FISHER: Does not the second part simply mean the substitution of the publisher instead of the author in the first part?

Mr. TEMPLE FRANKS: It looks like it.

Sir H. LLEWELLYN SMITH: I rather welcome this as indicating that if we were to insist that an engraving or a photograph should be signed that would not be regarded as a formality which would be inconsistent with the Convention. I think that makes it clear, does it not?

Mr. TEMPLE FRANKS: The first half of it.

Sir H. LLEWELLYN SMITH: Otherwise it would be an anonymous or pseudonymous work, and we could deal with it.

The PRESIDENT: I think these are all the points of real importance; the others I have passed over. I do not know now what would suit the personal convenience of the Conference. I do not know whether they would be prepared to meet again



to-morrow morning to consider the point we raised before—the constitutional question—and then go through these points we have raised to-day, such of them as we consider of sufficient importance, and decide whether we will adhere—assuming we ratify—to them or whether we will dissent from any of them.

Adjourned to to-morrow at 11 o'clock.

## SECOND DAY.

Thursday, 19th May 1910!

### PRESENT:

The Right Hon. SYDNEY BUXTON, M.P. (*President of the Board of Trade*)  
(*in the Chair*).

Sir H. LLEWELLYN SMITH, K.C.B. }  
G. R. ASKWITH, Esq., C.B., K.C. } (*Representing the Board of Trade*)  
W. TEMPLE FRANKS, Esq. }

H. W. JUST, Esq., C.B., C.M.G. (*Secretary to the Imperial Conference,*  
*representing the Colonial Office*).

A. LAW, Esq., C.B. (*representing the Foreign Office*).

F. F. LIDDELL, Esq. (*of the Parliamentary Counsel's Office*).

The Hon. SYDNEY FISHER, accompanied by P. E. RITCHIE, Esq. (*representing the*  
*Dominion of Canada*).

The Right Hon. LORD TENNYSON, G.C.M.G. (*representing the Commonwealth of*  
*Australia*).

The Hon. Sir RICHARD SOLOMON, K.C.B., K.C.M.G., K.C.V.O., K.C. (*representing*  
*the Cape of Good Hope, Natal, Transvaal, and the Orange River Colony*).

Sir THOMAS RALEIGH, K.C.S.I. (*representing the India Office*).

A. B. KEITH, Esq. (*of the Colonial Office*) and }  
T. W. PHILLIPS, Esq. (*of the Board of Trade*) } *Joint Secretaries.*

The PRESIDENT: The various Resolutions have been circulated as they stand; unfortunately they have not been circulated as a whole, and perhaps the simplest way would be that I should read them now.

Sir RICHARD SOLOMON: Before you go on to the Resolutions, may I read a telegram I received from South Africa last night from the Prime Minister of the Transvaal?

The PRESIDENT: Certainly.

Sir RICHARD SOLOMON: "Your letter not dated with reference to Subsidiary Conference Copyright has been submitted local Governments. Natal did not reply, but Cape, Transvaal, and Orange River Colony are all agreed that though uniform legislation is desirable Dominions should pass their own Acts acceding to Convention, and should not be included in Imperial Act." I do not think the Resolution we agreed to yesterday afternoon at all prejudices that position.

The PRESIDENT: I rather gather from that that the implication is that they probably would accept the Act, but they would prefer to do it by their own Act, or, possibly, when they come to see the discussion here they may be willing to do it in a simpler way. That is for the Union Government to decide afterwards.

Sir RICHARD SOLOMON: They do not want the Act to be expressly extended to the self-governing Colonies—that is the only thing.

The PRESIDENT: Without—which I think we are all agreed upon—some action on their own part.

Sir RICHARD SOLOMON: Yes.

The PRESIDENT: Shall I now read the Resolution as it now stands with the words which have been circulated, some of which were agreed to yesterday and some of which are new? I will read them as a whole: "(1) That an Act dealing with all the essentials of Imperial Copyright Law should be passed by the Imperial Parliament, after consultation with the Dominions; (2) That the Act should be expressed to extend to all the British Possessions. Provided that the Act shall not extend to any Responsible Government Dominion except with the assent of such Dominion." Certain other words were suggested—but I think the Conference came on the whole to the conclusion to omit them—at the end of that: "except with the assent of such Dominion to be signified either by Act or Resolution of the Dominion Parliament or by order of the Governor in Council." My recollection of the general feeling of the Conference yesterday was that it would be better to end at the words "Provided that the Act shall not extend to any Responsible Government Dominion except with the assent of such Dominion," which leaves liberty to the various Colonies to decide what is the best method of assenting. I think that is your view too, Mr. Fisher?

Mr. FISHER: That is quite satisfactory to me.

The PRESIDENT: Then No. 3 would be this—this is new, but it has been circulated, and it was read out, although you have not had it in writing before; it was circulated last night: "(3) As from the date on which the new Imperial Act takes effect the existing Imperial Copyright Acts shall be repealed so far as regards the parts of the Empire to which the new Act applies, and any Responsible Government Dominion not adopting the new Act may by Act of its Legislature amend or repeal the existing Imperial Acts so far as they relate to that Dominion, subject to treaty obligations." Mr. Fisher, have you had an opportunity of considering that?

Mr. FISHER: Yes. I received this typewritten copy last night, and I think that that covers the points necessary. The point that I wished to make perfectly clear was that the Acts repealed by this new Act should be repealed as to the parts of the Empire which did not accept the new Act—I think this Resolution embodies that idea—and that the Legislature of any self-governing Dominion should have authority to legislate beyond the new Act if they wished to.

The PRESIDENT: What do you quite mean by "beyond"?

Mr. FISHER: I can, perhaps, explain it best by taking a concrete instance. We in Canada have certain formalities which are embodied in our present law, and which—I am speaking, of course, subject to the voice of Parliament in Canada—but I think Canada would wish to continue all our statutes as applicable to non-Union countries.

The PRESIDENT: Does that mean that formality would not necessarily be imposed with regard to a Canadian author or any member of the Union, but might be imposed with regard to a non-Union country?

Mr. FISHER: Quite so. It might be imposed on a Canadian author if we so chose, but I personally would not care to impose it upon our own authors or upon



authors or publishers having authors' rights in Union countries. With regard to non-Union countries, however, I think we ought to be perfectly free to legislate and to impose conditions or formalities such as we thought best. That would not be in any way, I think, inconsistent with the terms of the Union under the Convention.

Mr. ASKWITH: It would not, in my opinion, be inconsistent with the Union at all, except that I do not know whether it would at all conflict with any of the provisions of the original Berne Treaty.

Sir H. LLEWELLYN SMITH: I think the point is very much mixed up, Mr. Fisher, with the point we reserved yesterday. I am afraid we are not quite ready to decide as to what kind of reservation it would be possible to make on Article 6. That is the back-door thing which lets in the non-Union country, so that it is a little difficult to say. If a non-Union author, by publishing in another country, could claim all the privileges of the Union countries in Canada, then it is of no use for you by local legislation to set up any barrier, so that that is a thing we have to look at.

Mr. FISHER: I am afraid that is a very crucial point with us.

Sir H. LLEWELLYN SMITH: I know it is; it really does turn upon that point.

Mr. FISHER: Yes.

The PRESIDENT: If you recollect, Mr. Fisher, yesterday you raised that point on Article 6.

Mr. FISHER: Yes.

The PRESIDENT: And I informed you that we had already considered it informally, and that we saw considerable objection to Article 6 and were considering how best in some way to reserve some power in connection with it. We sat pretty late and we really have not had an opportunity yet—Mr. Law, Mr. Liddell, the Foreign Office, and the draughtsman—to consider it; otherwise we should have been anxious to lay some words before the Conference to-day.

Mr. FISHER: The only reason I brought it up in this connection is that, supposing we had some such modification of Article 6 of the Convention, I did not wish the new Imperial Act to in any way hamper our legislation with regard to things which were not in conflict with the Union.

The PRESIDENT: Of course it may be that we shall be able to arrive at something in regard to Article 6 which might satisfy your position, but I gather what you are suggesting is that if that is not so, if we are not able to arrive at a conclusion sufficiently satisfactory to Canada, they would desire under their Canadian Act to reserve to themselves still greater powers than those given to them by the Imperial Act with regard to non-Union authors.

Mr. ASKWITH: The point being to a certain extent—putting it in broad language—supposing Great Britain is not able to have retaliation on America for her own part, Canada would like to retain the right to do it by herself.

Mr. FISHER: It would come to that.

The PRESIDENT: The point is how far that is beyond the Imperial Act. What do you think about that, Mr. Liddell—how far it would be beyond? Supposing our suggestions in the Imperial Act in regard to Article 6 were not sufficiently satisfactory to Canada, how far Canada, by her own Canadian Act, could extend those provisions by way, of course, of restriction, and how far by ratifying on our own behalf and on behalf of Canada the Berlin Convention, that would go beyond the scope of the powers of the Canadian Parliament, in practically amending our Imperial Act. That is the point, is it not?

Mr. FISHER: Yes. I might, perhaps, put it in this way, if you would allow me. We might wish to adopt the Imperial Act and still not remain in the Berlin Convention.

Sir H. LLEWELLYN SMITH: Or *vice versa*.

Mr. FISHER: I can hardly conceive of *vice versa*, because I presume—

The PRESIDENT: *Vice versa* would hardly suit you.

Sir H. LLEWELLYN SMITH: I can conceive it possible.

Mr. FISHER: Yes, I think we might be quite willing to adhere to the Imperial Act and still not be able to adhere to the International Convention.

Sir H. LLEWELLYN SMITH: Because you might not be able to comply with everything in the Convention, which leaves certain things open, like the term of copyright; and, on the other hand, you might not be able to come into the Imperial Act, which might be definite. That is conceivable.

Mr. FISHER: Yes, it is conceivable.

The PRESIDENT: There is no difficulty about it. Supposing we are able ourselves to come to the conclusion that we can reserve in regard to Article 6 such rights as will meet the Canadian position, then the question does not arise.

Mr. FISHER: No.

The PRESIDENT: It is only if we did not see our way either for drafting or for Foreign Office reasons, or any other reason, sufficiently to reserve Article 6 or portions of Article 6 to meet the Canadian view that you would suggest that probably the Canadian Parliament would desire in their own Canadian Act to put some words which would go in that respect beyond the Imperial Act.

Mr. FISHER: That is quite possible.

The PRESIDENT: The question is how far that would be constitutionally feasible, that is the point.

Mr. ASKWITH: I do not see why in a special ratification any special reserve in favour of Canada should not be made for Canada alone.

The PRESIDENT: As regards Article 6, I do not think it would be very safe. You would not like that, Mr. Law, would you? It is too much directed against America.

Mr. LAW: That is a matter for the Canadians to consider rather in that case.

Sir H. LLEWELLYN SMITH: The point is left ambiguous in the Convention as to whether the reservations can be different reservations for different portions of the same Empire. I mean the thing is not cleared up in the Convention text, and we are now trying to clear it up—as to whether they would accept special reservations for different portions of the Empire.

Mr. FISHER: I suppose there is no question but that portions of the Empire might accede to the International Convention and others not.

Sir H. LLEWELLYN SMITH: Certainly.

Mr. FISHER: Of course, it would be always open to us or to Australia or South Africa to secede from the Convention.



Sir H. LLEWELLYN SMITH: Always.

Mr. FISHER: But my object is to try to reach a point where it may not be necessary for us to secede.

Mr. ASKWITH: Mr. Phillips has given me an answer which has just arrived from the International Bureau at Berlin in regard to certain questions which have been asked in view of the possibility of these difficulties arising with the individual Colonies or Dominions. The question asked was: Can a State in ratifying the revised Convention be free to make a reservation or a number of reservations for itself and to reserve any number of different reservations for one or more Colonies? And the answer is in the affirmative.

Sir H. LLEWELLYN SMITH: Then that settles it. We do not want to have too many alterations.

Mr. FISHER: No, but still that settles the question for Canada.

Mr. ASKWITH: They point out quite rightly that they are not legally authorised to interpret the Convention, but they give their opinion.

The PRESIDENT: Then, subject to that point, as I say, we shall have to see what we can do in regard to it, and we would let the delegates see the suggestions we propose to make. Subject to that you think this would meet your view, Mr. Fisher?

Mr. FISHER: Yes; I think the wording here quite covers what I have made reference to.

The PRESIDENT: I think it does.

Mr. FISHER: I merely explained what I had in my mind—the wish that there should be no ambiguity, so that others should not understand it in a different way from my own understanding.

The PRESIDENT: Have you read this, Lord Tennyson?

LORD TENNYSON: Yes, I have. I think what Mr. Askwith has just read out covers everything—it covers all the objections which, on behalf of Australia, I should have had otherwise.

The PRESIDENT: Sir Richard?

Sir RICHARD SOLOMON: I do not think I quite understand the effect of this Resolution. I want to put this point: Under 5 & 6 Victoria, for instance, a person publishing in this country has copyright throughout His Majesty's Dominions; that is so, is it not?

The PRESIDENT: Yes.

Sir RICHARD SOLOMON: Take a self-governing Colony; Canada, for instance; Canada does not accede to the Berlin Convention, and passes an Act repealing 5 & 6 Victoria. What right of copyright then has a person publishing in the United Kingdom in Canada? That goes, I suppose?

Sir H. LLEWELLYN SMITH: It depends on what the Canadian legislation is.

Sir RICHARD SOLOMON: They could repeal the Act 5 and 6 Victoria altogether.

Sir H. LLEWELLYN SMITH: Yes.

Mr. ASKWITH: I suppose they would save existing rights.

Mr. FISHER: Yes, they would save existing rights certainly, but I mean future rights.

Sir RICHARD SOLOMON: Existing rights might be saved, but future rights?

The PRESIDENT: I take it that is so; that if Canada, standing out of the Imperial Act, passed legislation of her own, she could take away all future rights of everybody; but is it conceivable that she would wish to do so with regard to the rest of the Empire?

Sir RICHARD SOLOMON: I only want to know if it can be done.

The PRESIDENT: For the future that would be so.

Mr. FISHER: I think so.

The PRESIDENT: They would have a free hand to say you shall have no copyright or that there should be copyright limited in various ways, but I do not think there is any likelihood of its being used as against the rest of the Empire. On the contrary, it would be to Canada's disadvantage to do so.

Mr. FISHER: I think Canada's desire is to have complete reciprocity with the rest of the Empire for British subjects.

Mr. TEMPLE FRANKS: It is just a question whether these words, "so far as they relate to that Dominion" are a little ambiguous, and may raise the point Sir Richard has mentioned. If you construed them in one way they might be taken to mean that you could only repeal existing Imperial Acts so far as they relate to your own particular copyrights, and not as regards Imperial copyrights; that is not what is intended; it is merely a question of language.

Sir RICHARD SOLOMON: I think they could take away Imperial Copyright.

Mr. TEMPLE FRANKS: I think that is what is intended.

Sir H. LLEWELLYN SMITH: It is not an Act of Parliament—as long as the intention is clear.

Mr. TEMPLE FRANKS: "Repeal existing Acts so far as they are operative within such Dominions" would convey perhaps a little more clearly what is intended.

Mr. FISHER: I think that would be better. What I understand it to mean is that under such circumstances the law of the Dominion Parliament would be absolute in the Dominion.

Mr. JUST: May I ask Mr. Fisher a question on the constitutional point? If Canada is to repeal the existing Imperial Acts, that must either take place before the new Act comes into effect or the new Act must expressly state that it does not apply to Canada.

Mr. FISHER: As I understand the second part of these Resolutions, the new Act shall not extend to Canada until legislative action by Canada, or at least action by Canada.

Mr. JUST: Then you would remain under the old Imperial Acts until you——

Mr. FISHER: Until we repealed.



Mr. JUST: Therefore the new Act would expressly save the existing Imperial legislation as relating to Canada until Canada legislates itself out of it.

Mr. FISHER: That is what I understood the third Resolution to mean.

The PRESIDENT: And of course the Berne Convention as well.

Mr. FISHER: Until we secede.

The PRESIDENT: Or until you renounce it.

Mr. FISHER: Yes.

Sir H. LLEWELLYN SMITH: For the purposes of covering the hiatus.

Mr. FISHER: Yes, the application of the new Act is simply to cover the hiatus. No, excuse me, I made a mistake in saying that; the new Act would not apply and the old Act would continue in force to cover the hiatus.

Mr. JUST: Quite so.

The PRESIDENT: That and the Berne Convention.

Mr. FISHER: Yes.

The PRESIDENT: If these are agreed we can proceed. I thought it simpler really to discuss them as we have done, somewhat informally, because as a matter of fact you (Lord Tennyson) have only moved No. 1; but I thought we had better discuss them in this way as they went together. As we have now agreed to these Resolutions, I would suggest two others in order to complete them, and if so, then we will have them all put into one and move them formally. I think we wanted now two Resolutions, one amplifying a little and explaining your No. 1, Lord Tennyson, and it is to this effect—this becomes No. 1: "That this Conference, consisting of duly appointed Delegates of the United Kingdom and of the self-governing Dominions, unanimously recommends that an Act dealing with all the essentials of Imperial Copyright law shall be passed by the Imperial Parliament." That is only practically the Resolution we have already agreed to, but it strengthens it a little, just to show that it is the outcome of this Conference.

Mr. FISHER: Would it not be better to say, "Of the Dominions having responsible Government"?

The PRESIDENT: I have taken this as the term formerly used.

Mr. JUST: The general phrase is "self-governing Dominions," Mr. Fisher, I think.

Mr. FISHER: Is that the term you used in the Conferences?

Mr. JUST: Yes.

Sir H. LLEWELLYN SMITH: Self-governing Dominions is much neater.

The PRESIDENT: I agree. I took that as the phrase used in Lord Tennyson's motion.

Sir RICHARD SOLOMON: Is every self-governing Colony a self-governing Dominion?

Mr. JUST: It is now.

Sir RICHARD SOLOMON: I thought New Zealand was specially made a Dominion by an Act.

Mr. LAW: They are all called Dominions now, and Australia is a Commonwealth.

LORD TENNYSON: They are Dominions beyond the Seas, so I suppose they are Dominions.

Mr. LAW: That includes everything.

Mr. FISHER: That is the phrase used by the Dominions Branch of the Colonial Office.

Mr. JUST: Yes, self-governing Dominions.

The PRESIDENT: The wording of these can be altered; they are merely suggestions. I am not going to move these now. I just want to see if something on these new lines should be drawn up. The first is that we recommend: "That an Act dealing with all the essentials of Imperial Copyright Law should be passed by the Imperial Parliament." Then would come the Resolution, which would read—this would come as the final one, the wording of which is subject to consideration: "That this Conference, after considering in substance the Berlin Convention" (I put those words in to cover your point of the consultation—this is the consultation we have had) "is of opinion that subsequent to the passing of an Imperial Act the Convention shall be ratified by the Government of the United Kingdom on its own behalf and on behalf of the British Dominions, with any necessary reservations, but that with a view to uniformity of International Copyright the reservations shall be confined to as few points as possible," the object of that being in the first place to show that we have had consultation with regard to the major details, and, secondly, that we think we should ratify the Berlin Convention with as few reservations as possible, so as to have as great a unanimity as possible. I think we are all agreed upon that. I will redraft this.

Mr. FISHER: Yes.

LORD TENNYSON: Do not you think you should say "On behalf of the British Dominions with as few reservations as possible"—that is quite enough; you do not want the last sentence.

The PRESIDENT: I only thought it made it clear, that is all.

LORD TENNYSON: I think it is better to make it more concise.

The PRESIDENT: I think, Lord Tennyson, on the whole it would be better to put it that the reservations should be confined to as few points as possible, because, as I pointed out, the one or two reservations we make would be very considerable ones.

LORD TENNYSON: I do not want it to appear as if you were flying in the face of the very strong Committee presided over by Lord Gorell.

The PRESIDENT: We do not, it is their recommendation.

LORD TENNYSON: You say, "With any necessary reservations," as if there were any amount of them; Lord Gorell's was a very strong Committee, and many were very strong copyright experts.

The PRESIDENT: Will this meet your view—leave out those words "with any necessary reservations" and read "with the view to uniformity, any reservations to be made should be confined to as few points as possible"?



LORD TENNYSON: That is better.

The PRESIDENT: I drafted this very hurriedly.

Mr. FISHER: There is a point in connection with the adherence to the International Convention; will that adherence be declared on behalf of the United Kingdom and each of the Dominions separately?

The PRESIDENT: How is that, Mr. Liddell?

Mr. LIDDELL: You can either do it for all or for each.

Mr. LAW: Separate adhesion so as to secure separate withdrawal—reserving separate withdrawal in giving the separate adhesion.

Mr. FISHER: I notice in Article 26 of the Convention, on page 47 of the Copyright Committee's Report, it says: "Contracting countries shall have the right to accede to the present Convention at any time for their Colonies or foreign possessions. They may do this either by a general Declaration comprising in the accession all their Colonies or possessions, or by specially naming those comprised therein, or by simply indicating those which are excluded"—I think in our case it would be better to name those comprised.

Sir H. LLEWELLYN SMITH: That is always done, you know, by us; but it does not suit some other countries, it might be Portugal or France, that wanted to bring them all in.

Mr. FISHER: In our case I think it would be better to do that.

Sir H. LLEWELLYN SMITH: The modern method is always to do it, is it not?

Mr. LAW: Yes, the Colonies can accede after ratification; there is a year allowed usually for the accession of any Dominion to be notified.

Sir H. LLEWELLYN SMITH: That only applies to the Dominions, does it not? It does not apply to the Crown Colonies. The article that Mr. Fisher read out applies to Crown Colonies as well.

Mr. LAW: It is for them all, even for the smallest one. For the past few years it has been raised even for the smallest and most highly governed—a Crown Colony even.

Sir H. LLEWELLYN SMITH: They are all enumerated? The Leeward Isles—

Mr. ASKWITH: And Fiji.

Mr. LAW: Yes.

Mr. FISHER: Do you remember what the proceeding was in regard to the original accession to the Berne Convention?

Sir H. LLEWELLYN SMITH: This is prehistoric almost.

Mr. FISHER: My impression is that the Imperial Government acceded to the Berne Convention on behalf of the Dominions, the Colonies, subject to their ratification, because I remember distinctly that Canada by an Order in Council agreed to accede to the Berne Convention.

The PRESIDENT: Was the Berne Convention different from this?

Mr. LIDDELL: No, it is the same.

Mr. FISHER: A little different. That part that I read was the same.

Mr. LAW: They acceded for Canada.

Mr. ASKWITH: I have got here, Mr. Fisher, the procès-verbal of signature. "with reference to the accession of the Colonies or foreign possessions provided for by Article XIX. of the Convention": "The Plenipotentiaries of Her Britannic Majesty state that the accession of Great Britain to the Convention for the protection of literary and artistic works comprises the United Kingdom of Great Britain and Ireland, and all the Colonies and foreign possessions of Her Britannic Majesty. At the same time they reserve to the Government of Her Britannic Majesty the power of announcing at any time the separate denunciation of the Convention by one or several of the following colonies or possessions in the manner provided for by Article XX. of the Convention, namely: India, the Dominion of Canada, Newfoundland, The Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, and New Zealand."

Sir H. LLEWELLYN SMITH: That shows the diplomatic form in which the thing was done eventually. Mr. Fisher's point was what communications took place between the United Kingdom Government and the Canadian Government before they were able to hand that in.

Mr. LAW: That was by agreement; they were asked to agree.

Sir H. LLEWELLYN SMITH: I think they were asked.

Mr. FISHER: Mr. Ritchie tells me that Canada was asked and agreed to enter the Convention before the Imperial Government acceded.

Sir H. LLEWELLYN SMITH: I think that was so; anyhow, it has been so in recent treaties, I know.

Mr. LAW: And they did so with the additional Act at Paris. Of course, all that can be made clear when we come to put in the ratification.

The PRESIDENT: I think I ought to put in this, No. 2 (b) it is called, if you would not mind looking at it, Mr. Fisher, as it affects you. I think these words ought to be added: "that the Conference, after considering in substance the Berlin Convention, is of opinion that subsequent to the passing of an Imperial Act or any Act of a self-governing Dominion"—because you would not wish, if the Imperial Act was passed first and your Act, if one was necessary, was passed later, that we should ratify for you until your Act had been passed.

Mr. FISHER: No.

The PRESIDENT: Then I will just have these retyped and put them together.

Mr. FISHER: May I ask you to read those words again, Mr. President?

The PRESIDENT: "That the Conference, after considering in substance the Berlin Convention, is of opinion that subsequent to the passing of an Imperial Act and of any Act of a self-governing Dominion, the Convention shall be ratified"—"on her own behalf and on behalf of the British Dominions acceding to it" would be the best way, would it not?

Mr. FISHER: "And on behalf of the British Dominions on such Dominions passing an Act."

The PRESIDENT: "On such Dominions giving their assent as above mentioned." I will just redraft it, this is quite rough. I see the point, but I will get some words and suggest them. I will have these all retyped in order as they stand for the benefit of the Conference.

Sir Thomas, I think I had better just mention the Indian case so as to get it on the Notes.

Sir THOMAS RALEIGH: Yes, if you please.



The PRESIDENT: Sir Thomas Raleigh, as representing the India Office, asks me to say that the India Office desire an assurance that the Imperial Act shall not be extended to India until the Secretary of State in consultation with the Government of India has agreed. We fully intended that, and of course, in all our discussions and considerations of these matters we have had the advantage of Sir Thomas's presence here, and in discussing our Bill we should have him there as representing the India Office, and I do not anticipate any difficulty arising. Lord Morley wished me just to give this assurance, which I of course willingly do, I am sure, on behalf of the Conference.

Now I will have all these draft Resolutions retyped and circulated so that the Members of the Conference will be able to see them in type.

LORD TENNYSON: May I ask one question: How soon shall we have the heads of the Bill? The Australian Government telegraphed to me wanting to know the chief details, and it would be rather difficult to supply them with what comes out of this Conference.

The PRESIDENT: The details are the points we went through yesterday.

LORD TENNYSON: But you have not laid them down on behalf of the Imperial Government. Australia wishes to be afforded an inspection of the general details of the proposed Imperial Bill.

Sir H. LLEWELLYN SMITH: The faster we can get on with this Conference the quicker we will get on with the draft.

The PRESIDENT: What I had in my mind was this, that we should now discuss, or rather rediscuss, the points which we just mentioned yesterday without coming to any decision about them—the points about which alone I think any question will arise. We went through the various Articles; they were the only points upon which any question could arise, and when the Conference has come to a decision with regard to them, we could then proceed to draw a Bill, or, at all events, to draw the heads of a Bill.

Sir RICHARD SOLOMON: Shall we have an opportunity of seeing the draft Bill before it is introduced into Parliament, and be allowed to make observations upon it?

LORD TENNYSON: That is the point.

Sir RICHARD SOLOMON: We could not expect it to be sent out to the Colonies, but if the representatives of the Colonies could see the draft of the Bill, they could communicate it to their Governments.

LORD TENNYSON: Just the chief heads?

Sir RICHARD SOLOMON: I would like to see the whole Bill.

The PRESIDENT: Do you suggest, Sir Richard, that the rough draft Bill, or the heads of the Bill, should be sent to the representatives of the Dominions here for their consideration or that they should be sent out?

Sir RICHARD SOLOMON: That they should be sent to the representatives here. We have no right, of course, to make any suggestions, but still we might make suggestions which would make the Bill more acceptable to our particular Colony.

Sir H. LLEWELLYN SMITH: It obviously would be a very great advantage if we had the opportunity of consulting the representatives who are here. The difficulty about circulating it to Dominions at the other end of the world is the loss of time.

Sir RICHARD SOLOMON: I quite see that.

LORD TENNYSON: You will circulate it to the representatives here.

Mr. FISHER: I do not think that would be necessary at all; should it be desirable we could cable the points to our Government and ask for suggestions.

Sir H. LLEWELLYN SMITH: It would be a great advantage if we could consult with Lord Tennyson, Sir Richard Solomon, and Mr. Hall-Jones, at all events, who are permanently here.

The PRESIDENT: How long are you to be here, Mr. Fisher?

Mr. FISHER: As long as is necessary.

The PRESIDENT: The drafting of a Bill is not a very rapid process, but we could draft it, I should think, when we see how we get on with regard to these points—and the fewer the points reserved, the easier the Bill could be drafted. We have already worked at it to a certain extent, but not sufficiently to be able to lay it before the Conference. Perhaps you will kindly raise that point again when we have discussed the different points, and we will be able to see what we can do.

Now I think, with the consent of the Conference, we might take these various points that were reserved yesterday, and the first is at page 36 of the Report of the Committee which we went through yesterday. That gives the various Articles very clearly. We have settled the point as to "whatever may be the mode or form of its reproduction," that is to say, we are to have words to show that this proposal is not really any extension of the Berne Convention in regard to that matter.

Mr. LIDDELL: Do you mean not to extend it? because I do not think you can keep the present absolutely irrational limitations on what is infringement of copyright and what is not. At the present moment a photograph of a piece of sculpture is not an infringement of the sculpture, whereas a photograph of a picture is, and in the same way, if you take the design of a picture and reproduce it in bas-relief it is not an infringement of the copyright in the picture. From the flat to the round, or from the round to the flat, is not an infringement of copyright. Can you keep that distinction?

The PRESIDENT: We are going on a common-sense basis; we want to show that no great extension is to be inferred from these words.

Sir H. LLEWELLYN SMITH: My own view certainly is that when we come to draft our Bill we shall find we have to extend our present copyright a good deal further. At the same time, I think it is a good thing to note that in this International Convention we have not bound ourselves to extend it in the very wide and unlimited way in which these words might be read.

Mr. LIDDELL: Except in so far as you are bound to say that the production of a gramophone record is an infringement of a musical work.

The PRESIDENT: That is the last point. We must take this Article in connection with the Articles affecting photography, and so on. Is that agreed?

Then the next point is the question of pantomimes. Some one of the delegates, I think, raised an objection to that. I think it was Sir Richard Solomon.

Sir RICHARD SOLOMON: No, I did not. I do not care about pantomimes particularly.

LORD TENNYSON: I raised objection to music-hall turns being included.

The PRESIDENT: I forget whether Mr. Askwith said that music-hall turns were or were not included. Mr. Law, do you say they are included?

Mr. LAW: I could not undertake to say; I do not know what a music-hall turn is.

LORD TENNYSON: That is a clause that really little affects the British Empire.



The PRESIDENT: I take it that this is the Italian clause.

LORD TENNYSON: Yes, and it affects Great Britain so little that it really does not matter.

Sir H. LLEWELLYN SMITH: I hope Mr. Liddell may be able in drafting to avoid the use of the word "pantomime" in our Bill. It would give rise to a good deal of ridicule, I think.

Mr. LIDDELL: Yes, especially as it is not a correct translation.

Sir H. LLEWELLYN SMITH: "Dramatic performance with or without words" might do it.

The PRESIDENT: Shall we pass it on the general ground of uniformity?

LORD TENNYSON: Yes.

The PRESIDENT: Very well. Now comes the much more difficult question we were discussing yesterday—the question of buildings—architecture and works of art.

LORD TENNYSON: What Article are you on?

The PRESIDENT: The same Article—architecture and works of art. The general feeling I rather gathered to be somewhat adverse to including buildings simply as such, but not so adverse to including buildings if it were shown that in that building there was an original artistic effort. We have been considering the matter, and this is the clause which Sir Hubert suggests as possibly meeting the questions which have arisen, which I will read, subject to criticism and alteration: "That the Conference is of opinion that an original work of art should not lose the protection of artistic copyright solely because it consists of or is embodied in a work of architecture or craftsmanship" (that would cover statues and so on), "but that it should be clearly understood such protection is confined to its artistic form" and does not extend to processes or methods of production, or to industrial designs "capable of registration under the law relating to designs, and destined to be multiplied by way of manufacture or trade." It is a little complicated, and Sir Hubert Smith had better explain it.

Sir H. LLEWELLYN SMITH: This is an attempt to deal with two points that arise on Article 2, which I think are very closely related, that is to say, a work of architecture and what I call a work of artistic craftsmanship, say an embossed silver vase or something that is a work of art, but which, because it is neither a painting nor an engraving, nor sculpture, does not come at present under our law of artistic copyright.

Mr. ASKWITH: To make it a little more plain I may mention that the last paragraph of Article 2 says: "Works of art applied to industrial purposes shall be protected so far as the domestic legislation of each country allows." Great Britain and Switzerland were the only two countries who held out against works of art applied to industrial purposes going into the first paragraph of Article 2 as matters that should be protected. Great Britain is being pressed by France to put it in the first paragraph.

Sir H. LLEWELLYN SMITH: That goes very much farther than this paragraph I have drafted here. I am speaking of an original work of art which is also a work of architecture or craftsmanship; for example, Mr. Brock's Memorial to Queen Victoria might be ruled out because it was a work of architecture—or might be held to be—or the Albert Memorial, although they are clearly what would come under the head of works of art. Then there is the work of the artistic craftsman, which is not protected because, as I say, it does not come under any of the heads to which our present artistic copyright law is confined. But the difficulty here has been to get a form of words which would give the necessary protection to those original works of art, although they are applied to utilitarian purposes, and yet would not extend to the vast mass of industrial designs which are produced for the purpose of

multiplication for textile fabrics or wall papers or what not, which are at present the subject of a different law and which are registered as industrial designs both with us and with you in the Dominions and get a more limited protection. We see great difficulty in giving such industrial designs life and fifty years without formalities, because it would be a great hindrance to trade, because those things are produced very largely and sold to manufacturers who attach great importance to the certainty that they get a thing that has not been anticipated, which they get from the fact of its having been registered and a search having been made. This clause I have drafted attempts to give to the real work of art the full protection, while not overlapping the proper sphere of the Industrial Designs Act.

Mr. FISHER: That involves a modification of the terms of this Article 2, does it not? Your view would not come in under the term "architecture" alone.

Sir H. LLEWELLYN SMITH: It would come in under the last clause, Mr. Fisher—"Works of art applied to industrial purposes shall be protected so far as the domestic legislation of each country allows"—the last words of Article 2 on page 37. You see the Convention has left it open to each country, but now that we are discussing what should go into the Imperial Act, we have to decide what the domestic legislation ought to be, and that is our suggestion.

The PRESIDENT: I think this may be taken not to be a reservation; but our explanation of how we read the Article.

Sir H. LLEWELLYN SMITH: It is no reservation.

Mr. LAW: Do you take that to be the meaning of the Conference, Mr. Askwith, on that point?

Mr. ASKWITH: I think they went a little bit farther.

Mr. LAW: I thought you read out some words yesterday—that they contained elements of originality and also of artistic merit.

Mr. ASKWITH: Yes, those two points.

Mr. LAW: So that would cover it.

LORD TENNYSON: I think that quite covers it, Mr. Askwith.

Mr. ASKWITH: To my mind I think it would be a very fair covering of it. Whether the French would say so or not I do not know, but I am entirely against interfering unduly with textile registration, and that sort of thing, and the Designs Act; but there is a class of works of art which require to be in a different category.

Mr. TEMPLE FRANKS: The danger to be guarded against is that if you give a wider protection, you undermine so far your Designs Act, because your Designs Act will certainly not be utilised for those purposes for which you would get the wider protection under the artistic copyright, and that has been found to be the case in France and, I think, Germany—France at any rate.

Mr. LAW: Of course, there was very severe criticism of the Designs Act from one of the Committees which dealt with the subject.

Sir H. LLEWELLYN SMITH: They sought no evidence before the Committee from the people who administered it.

The PRESIDENT: But, Mr. Temple Franks, this does not carry it further.

Mr. TEMPLE FRANKS: No. I was merely suggesting that that was the danger we had to guard against; the Resolution will leave it open to protect the Designs Act, so far as it was necessary, by appropriate reservations in the Act.

The PRESIDENT: Shall we take this as an indication to our draftsman with regard to the word "architecture" and so on?



Mr. TEMPLE FRANKS: I was only wondering if we were going to discuss architecture further.

The PRESIDENT: Yes, if anybody wishes to do so.

Mr. TEMPLE FRANKS: That leaves, of course, the details of what protection you are going to give to the artistic nature of the architecture still open.

The PRESIDENT: As to the years?

Mr. TEMPLE FRANKS: Yes, it is merely a suggestion that you will protect the artistic features of architecture.

The PRESIDENT: We get to the years later. Then Article 3 we did not discuss yesterday, which is, "The present Convention shall apply to photographic works." I do not know whether anybody has any objection to that in principle.

Sir H. LLEWELLYN SMITH: We have always protected them. It does not mean anything new.

The PRESIDENT: Then the next Article is Article 4, page 38, the question of formalities. This a very important point. The position, as I endeavoured to explain yesterday, is that the Convention practically abolishes all formalities. Personally I think that we should accept that, in accepting the Convention, as a general proposition. But it is quite clear, so far as we have been able yet to examine it, that in certain circumstances it will be necessary to include a certain amount of formality, and those would rather be points we shall have to consider in drafting the Bill. I do not think it would be a reservation in the sense of being adverse to the general basis of the Convention. There are certain cases in which I think it will be necessary, and I think you raised that very point, Mr. Fisher, in the case of Canada as to some of your formalities, but that was only because you wished to apply them rather as against the non-Union person.

Mr. FISHER: Yes; of course we have in Canada what is called a formality—we make a condition of printing in the country. I think we would be quite prepared to allow copyright obtained in other countries, where there were no formalities, to be granted the same protection in Canada. Whether we would be prepared to say that we would in Canada grant the protection of copyright without any formalities imposed upon a Canadian who wished to obtain Canadian copyright I am not so sure, but I think we would be quite prepared to accept and grant the protection to other countries in the Union obtained under their law without formalities.

Mr. ASKWITH: You would leave it as a local dispute between your local author and your local publisher.

Mr. FISHER: Yes.

LORD TENNYSON: Of course, in Australia we have very strong registration, and also manufacturing clauses in the Copyright Bill there. But I do not think there will be any difficulty as to formalities, for in answer to a question of mine on these points, the Commonwealth Government cabled to me in March, 1909, "With reference to your telegram of 1st March, Australian Act does not require registration or manufacture, as condition of copyright in foreign works; such copyright in Australia rests with Imperial Act. Registration merely condition precedent to invoking special remedies under Australian Act. British Empire is one country for purposes of copyright convention and Commonwealth not aware of any proposal to deal with subject on any other basis."

Sir H. LLEWELLYN SMITH: As a matter of fact, what are the formalities at present? There is the formality of registration.

Mr. TEMPLE FRANKS: Registration of literary copyright is registration at Stationers' Hall. You must have that before you bring your action, but it is not necessary for your copyright; that is to say, you can sue for infringement committed before your registration as regards literary copyright.

The PRESIDENT: The reason for that, I take it, is that at present the copyright begins from the date of publication. I thought if we agreed to this other provision of life, there would be no necessity for registration.

Mr. TEMPLE FRANKS: No, it is merely a condition of your rights of action so far as literary copyright is concerned. So far as artistic copyright is concerned, you cannot sue for infringements for any act done before registration. You may register at any time. If you do not choose to register sufficiently soon you cannot sue for any act of infringement committed before registration. So that is effective.

Mr. LIDDELL: That only applies to paintings, drawings, and photographs. As far as engravings are concerned there is no registration at all, but you must print the name of the engraver and the date.

The PRESIDENT: And that is probably a formality which will have to continue in existence.

Mr. LIDDELL: And on works of sculpture you have to put the date and the name.

Mr. TEMPLE FRANKS: There is an alternative. If any colony or the United Kingdom desired to keep their formalities to a certain extent there is the alternative plan which I think I suggested yesterday, to allow your existing formalities to be optional, but to put them on a more simplified and consistent basis, and make them the condition of certain remedies.

The PRESIDENT: What would be the advantage of that?

Mr. TEMPLE FRANKS: That while you might obtain an injunction to restrain an infringement of your copyright you could not have damages unless you registered. You draw a distinction between the actual existence of your copyright which you can protect anyhow, whether you register or not, but you do not allow damages for infringement until you have registered—until you have given the world an opportunity of judging for itself, or at any rate having some evidence that there is copyright in existence. That is the law at present with regard to designs where, if a man does not choose to register or take such steps as he is bound to do under the Designs Act, he cannot get damages although he may get an injunction.

Sir H. LLEWELLYN SMITH: Then he gets for his money and registration something very much more than we are thinking of now, he gets an expert search made to see whether he has been anticipated.

Mr. TEMPLE FRANKS: That is quite true; but so far as this proviso is concerned, it merely makes registration and certain formalities—

Sir H. LLEWELLYN SMITH: Can anybody suggest the use that is served by the present registration of books at Stationers' Hall. What earthly use is there of continuing the salaries for the officials there?

LORD TENNYSON: There is not any registration now necessary on publication.

Sir H. LLEWELLYN SMITH: You cannot bring your action without it.

The PRESIDENT: Your copyright runs, but you cannot bring an action against infringement before you have registered?

Sir H. LLEWELLYN SMITH: You cannot bring an action before, but you can bring it in respect of infringement before. Therefore, as part of your process of bringing your action, you go and register, so that it is perfectly futile.



Mr. ASKWITH: You can register the same day as you issue your writ.

Mr. TEMPLE FRANKS: I think that is futile. With artistic copyright it is quite a different thing. It might be put on the same basis as artistic copyright if you allowed it to be optional, and abolished it as necessary to enforce your rights to copyright.

The PRESIDENT: Artistic copyright means in the case of engravings, for example.

Mr. TEMPLE FRANKS: A picture, not an engraving.

The PRESIDENT: You have to put the name?

Mr. TEMPLE FRANKS: On an engraving you have to put the name, there is no registration.

The PRESIDENT: You put the name and the date.

Mr. TEMPLE FRANKS: Yes.

The PRESIDENT: And the copyright begins from that.

Mr. LIDDELL: Yes.

Sir THOMAS RALEIGH: There is an incidental use in the register. I may point out that the register at Stationers' Hall has been extremely useful and valuable as a piece of literary history. For instance I might take the first book that comes into my mind,—Masson's Life of Milton,—the register at Stationers' Hall is used throughout in order to give a general literary picture of the period, what books were being published at certain stages and which parties and schools of opinion contributed most largely to literature. It is very interesting as history, but whether it justifies the existence of the register, I do not presume to say.

Sir H. LLEWELLYN SMITH: I am afraid it must be obsolete now, because at present you are not bound to register unless you wish to bring an action.

Mr. LAW: Also there is an index to the Library of the British Museum here which covers a large ground, and research in the future will be far greater than in the past.

The PRESIDENT: Just to take the artistic copyright, what do you say?

Mr. TEMPLE FRANKS: That you may register at any time, but you cannot bring your action for infringement on acts which occurred before registration.

The PRESIDENT: Supposing formalities are abolished is there any reason for maintaining them with regard to the artistic?

Mr. TEMPLE FRANKS: The real reason which might be put forward to the public is the question of the innocent infringer. The man who innocently infringes ought not to be mulcted in heavy damages if he had no means of knowing, or no reasonable notice, of the existence of the copyright.

The PRESIDENT: Would he be free from liability if he could show that he did it quite innocently?

Mr. TEMPLE FRANKS: That ought, I think, to be made clear.

Sir H. LLEWELLYN SMITH: The formality of signature I understand to be saved by the Convention, because if it is not signed in the accustomed manner it becomes an anonymous work, and therefore it goes out of the Convention.

Mr. LAW: Is that general?

The PRESIDENT: What number is that?

Mr. FISHER: Fifteen.

Mr. TEMPLE FRANKS: It would not be inconsistent with it.

Sir H. LLEWELLYN SMITH: It becomes anonymous and is therefore taken out of Article 7.

Mr. LIDDELL: Only so far as the term is concerned.

Mr. ASKWITH: I cannot see how you could trace registration of a picture; if you had a certain description of the picture, one knows very frequently that the names on pictures are changed many times in their history. If you looked up in an alphabetical list for the title of a picture it would be extremely confusing.

Mr. TEMPLE FRANKS: I might just read this section from the Patents and Designs Act, 1907: "Before delivery on sale . . . the proprietor shall . . . cause each such article to be marked with the prescribed mark, or with the prescribed words or figures, denoting that the design is registered; and if he fails to do so the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design, unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design." I do not suggest that the precise clause could be incorporated in an artistic copyright Bill, but something on those lines might be, and would not be inconsistent with the Convention. If you desire to abolish all formalities you can still leave the formalities to be the necessary step to obtaining damages against the innocent infringer.

LORD TENNYSON: I do not think the artists would like that; I do not think they would approve of it.

Sir RICHARD SOLOMON: Are not the damages in the discretion of the Court?

Sir H. LLEWELLYN SMITH: I think the artist should be compelled to sign his work, because otherwise it is an absolutely anonymous article.

Mr. LAW: How are you to sign a photograph?

Mr. LIDDELL: You could very easily put your name on.

Sir H. LLEWELLYN SMITH: I thought that was very easy.

Mr. LAW: Where would you do it, because it interferes with the appearance of the photograph to have a name on it?

The PRESIDENT: Not the mere name and date.

Mr. LAW: There was a great deal of evidence upon that; if the members really wish to go into that question the only way to do it is to refer to the evidence given upon those points.

Mr. FISHER: Our law requires that a photograph shall have the name and date on it, and the photographers object very much to it, they all complain of it.

The PRESIDENT: It spoils the look of it.



Mr. FISHER: It does have that effect rather.

Mr. RITCHIE: And to meet that objection we reduced the old copyright notice, which was rather long; "Entered according to Act of the Parliament of Canada in the year [ ] by A.B., at the Department of Agriculture," and substituted the words "Copyright, Canada, 190 , by A.B."

The PRESIDENT: That is on the photograph.

Mr. RITCHIE: That is on everything.

Mr. LIDDELL: That is misleading after it ceases to be copyright.

Mr. FISHER: And it is objected to by the photographers very much indeed.

The PRESIDENT: And, as Mr. Liddell points out, it has this objection, that it goes on being called copyright after the copyright period has elapsed.

Mr. FISHER: Not if the date is given.

The PRESIDENT: I thought you said copyrighted in Canada.

Mr. RITCHIE: No, with the date and name of the proprietor.

The PRESIDENT: You require that now.

Mr. RITCHIE: Yes.

The PRESIDENT: I rather gathered, Mr. Fisher, from what you said that, so far as Canada is concerned, you think it probably would not object to the abolition of formalities for a foreign author who was a member of the Union coming in, but possibly you would require to retain a certain amount of local formalities.

Mr. FISHER: Yes, I think we would be quite prepared to give all rights in Canada to a subject or citizen of a country of the Union which he has obtained under the law of his own country, whether there are formalities or no formalities, without asking him to fulfil the formalities which we have for our own people. That is what I call complete reciprocity, but I am not sure by any means that Canada would be prepared to abolish all her own formalities for her own people.

The PRESIDENT: How does it strike you, Lord Tennyson? In Australia, I take it, there is a considerable amount of formalities.

LORD TENNYSON: It is difficult for me to say, but I should think on the whole, from what I have heard, they would be willing to join the Imperial Government and come into the International Convention if they are all now to have the heads of the Bill, which are manifestly going to give full liberty to the Dominions. On 11th February 1909 the Commonwealth Government telegraphed to Captain Collins, "Tennyson should be informed Commonwealth does not desire to see Imperial Copyright Act abolished."

The PRESIDENT: You, Sir Richard, have not had the opportunity of consulting.

Sir RICHARD SOLOMON: I think all our laws require registration, but we have not had enough experience of how that works, and there are very few things registered at all events. I do not think they have any views at all upon it.

The PRESIDENT: Then I think in drafting a clause about this we can clearly give the members of the Union full rights in the other countries of the Union, that is to say, in Great Britain and the Dominions, whatever the formalities or want of formalities. If they have abolished all their formalities in their own country we should not require any further formalities, but we shall have to reserve in each case probably some local formalities.

Sir H. LLEWELLYN SMITH: At the same time the Convention, as I read it, would not be satisfied if the protection was confined to articles which had satisfied the

formalities of the country of first publication. I think whether or not they have satisfied them they are entitled under this Convention to copyright in other places.

The PRESIDENT: Yes, I think that we are agreed upon. As I understand, the suggestion is that we should not go behind that. If a foreign author comes in we do not require any formalities of him at all. He may or may not have complied with the formalities of his own country, but we do not go behind that because we are agreed on the general principle with the Berlin Convention that no formalities are necessary. Therefore, it is not for us to say whether he has complied with the local formalities of his own country. But as regards our own country and our own dominions it may be necessary for us, and clearly will be necessary in certain cases, to insist upon certain formalities, dates or names or whatever it may be, and I do not think that would be inconsistent with the general Convention. What do you think, Mr. Law?

Mr. LAW: This Article 15 seems to deal with the question of identity—as to who is the owner of the copyright. It does not seem to have anything to do with the question whether people must, in order to secure copyright, put their names in the accustomed manner on their works.

Sir RICHARD SOLOMON: I do not think it requires it at all; it merely says you are presumed to be the author if your name is on it, for the purpose of proceedings.

Mr. LAW: If they are the authors or the representatives of the authors then their name need not appear on the work.

Sir H. LLEWELLYN SMITH: In that case they can take proceedings for infringement of whatever copyright is given in that country to an anonymous work. If their name is not on it it is anonymous.

The PRESIDENT: It is chiefly to deal with anonymous works. I think this is a case in which we must see what sort of clause we can draw, and it is one of the things you would like to consider when we have drawn it.

Mr. ASKWITH: I did not understand Mr. Fisher to indicate that a Canadian author producing a book in Canada and not registering it, Canada being a country within the Union, would therefore be suspended from being considered the author of that book and being able to protect his book, say, in France.

Mr. FISHER: I did not go so far as to say that he should not protect his work in France. I said that I do not think he could protect his work in Canada.

Mr. ASKWITH: You confined it to Canada.

Mr. FISHER: Yes. I was going to give an explanation with regard to what you said a few minutes ago, Mr. Buxton, if I might. I gathered from your last remarks upon that, that in a country whoever wished to obtain copyright protection need not comply with the formalities of that country under the Convention, but could still obtain all the rights of protection.

Sir H. LLEWELLYN SMITH: In another country.

Mr. FISHER: In another country. That, of course, is going pretty far.

The PRESIDENT: But the first proposition I put, which does not go quite so far, is that taking a member of the Union, say a French author whose books are published here and circulated here, it will not be our business to inquire whether he has carried out the French formalities or not. As a member of the Union we would not go behind that one way or the other. He should obtain the copyright. I do not see how we could find out, indeed, and that would apply equally in the case of the Canadian who had not complied with the formalities in Canada, but whose books would not be given copyright in Canada, although they have it in other parts of the Union. I think the two things must go together.



Mr. FISHER: I do not think we could undertake to investigate, but we might require that when he went into court to protect himself, he should prove that he had copyright in the country from which he came.

The PRESIDENT: That is to say, if there were no formalities; or if there were formalities that he had carried them out.

Mr. FISHER: That he had obtained legal copyright in his own country before he put forward the demand for protection in another country. That would be my own view of the matter.

The PRESIDENT: That would be the case for a person who wished to reproduce.

Mr. FISHER: No, that would be the case of a man who was trying to protect himself against infringement in another country. Supposing a Frenchman, who was a member of the Union, of course, published in England but had never obtained copyright in France for any work published in France, and had not complied with the necessary formalities in France, whatever they may have been, greater or less as it may be, could he then come and claim protection in Great Britain, in other countries than his own?

Mr. ASKWITH: One of the objects of sweeping away formalities was the simplification of litigation. Supposing a Canadian author sued in the French courts, it should not be a defence to his action to say, "Oh, you have not complied with the Canadian law, and you must bring a Canadian lawyer here and put him in the witness box to tell us what the Canadian law is, and what you ought to have complied with," and there would be a lot of scientific and expert evidence about the law of each country, whenever a man being in another country of the Union desired to bring an action against a pirate.

Mr. FISHER: Of course, without the formalities of registration it would be a difficult thing. With the formalities of registration there would be no difficulty.

Mr. ASKWITH: He has to prove that he is the author of the book, and that it is an original book.

The PRESIDENT: The position you are putting is the position already in existence under the Berne Convention, and I understand the object of this new clause of the Berlin Convention is to get rid of such difficulties as arose—litigation and others—as to definite proof under that.

Mr. FISHER: I do not think it is a vital point.

Mr. TEMPLE FRANKS: It is so expressed here—that the rights are independent of the existence of protection in the country of origin of the work.

Sir H. LLEWELLYN SMITH: It is very clear.

The PRESIDENT: I do not think it is an unjust thing. It is not likely to occur very often, and I think it certainly gets rid of all questions or complications and litigation in regard to the matter. Really I do not think anybody is very likely to be prejudiced by it. Perhaps, however, we might be allowed to consider by the light of what has been discussed here in drafting the clause, and we will see how far we are able to go.

Mr. ASKWITH: At the bottom of page 38 that clause about simultaneous works will have to be kept in mind when any alteration of the reservation in Article 6 is considered.

The PRESIDENT: Yes, that is the general proposition we agree to. As to the general proposition as to published works there is nothing on that. Would any member of the Conference stop me if I am passing over a clause to which they think attention ought to be drawn? I am not touching on some minor matters.

Sir H. LLEWELLYN SMITH: The top words on page 29 give a definition of "published works" which is quite inconsistent with the definition in the English law at present.

Mr. LIDDELL: Quite so; it is only for the purposes of the Convention.

Sir H. LLEWELLYN SMITH: So we must understand that throughout the Convention the word "publication" means something quite different from what it means in English law.

The PRESIDENT: We should alter that, should we not?

Sir H. LLEWELLYN SMITH: That is Mr. Liddell's task, to bring them into harmony. Publication with us means something very different from this.

Mr. LIDDELL: By this, publication of a picture means sending the picture to an engraver to issue copies of the engraving.

Sir H. LLEWELLYN SMITH: You publish a picture under the English law by exhibiting it in the Royal Academy, do you not?

Mr. LIDDELL: Yes.

Sir H. LLEWELLYN SMITH: Under the revised Convention, you see, nothing is published unless copies are issued by the publisher.

Sir RICHARD SOLOMON: Does it matter much what publication is if the man is protected for his life and a definite number of years afterwards?

Mr. LIDDELL: It does not very much matter.

Sir H. LLEWELLYN SMITH: Of course it reduces the difficulty very greatly if you assume that the term of protection is going to be life and 30 or 50 years, but that is left open, remember, in the Convention itself. It is recommended, but not obligatory.

Sir RICHARD SOLOMON: Yes, but if you adopt life and so many years after death there would not be much virtue in publication.

Sir H. LLEWELLYN SMITH: I only want to point out that there is a big discrepancy there.

The PRESIDENT: We shall have to consider this point without reserving it. We shall have to consider how far our description of publication is better. Then Article 6 we need not re-discuss because we will see what we can do in regard to that, Mr. Fisher.

Mr. FISHER: Yes. You will let us know what your proposition is with regard to it.

The PRESIDENT: Certainly. We may take a little time because it is very complicated, and the Foreign Office have to consider it very carefully too. Then there is Article 7, I think I rather gathered from our short discussion in regard to this point yesterday that the Conference is agreed that we should get rid as regards copyright of the question of the date of publication, and that it should be for life plus  $x$  years. That I think we are all agreed upon.

Sir RICHARD SOLOMON: Yes.

Sir H. LLEWELLYN SMITH: For books.

The PRESIDENT: For books. Now in regard to the years I should rather like to know what the members of the Conference think. I ought just to say this, that



this is not a question of reservation ; it is a question on which we are left by the Convention, the power of fixing our own local term. It is not a reservation in that sense, it does not I mean go contrary to the general principle of the Convention as long as we accept the life. We need not accept that, but having accepted it that, of course, simplifies the matter.

Mr. TEMPLE FRANKS : I suppose there is no reason why you should not have two terms, divide the various things mentioned in Article 2 into, say, two great divisions, one books, music, and painting, and the other to include the rest ; and provides, with regard to the more important, that they should have life and 50 years, or life and 30 years, and with regard to all other things like plans, sketches, choreographic works, and so on, they should have either life and 15 years—that is quite long enough for them—or better still, probably 20 years from first publication. Then you bring back, of course, the difficulty of the question of publication.

The PRESIDENT : I think we had better keep to life.

Mr. LAW : You lose all uniformity if you get away from the proposal of taking life, do you not ? and there is the falling in, the certainty of knowing when the copyright has fallen in, and all those advantages.

Sir H. LLEWELLYN SMITH : But Germany does not give the same protection to photographs. What does it give ? I know it is much shorter.

Mr. LAW : The question is what is the life in the case of a photograph ?

The PRESIDENT : But your point is "life."

Sir H. LLEWELLYN SMITH : I do not think life comes in for photographs in Germany ; I think it is a number of years.

Mr. LAW : Photographs are specially reserved here.

Sir H. LLEWELLYN SMITH : Yes, I know, but they do not have the principle of life.

Mr. FISHER : The law of the country decides with regard to photographs.

Sir H. LLEWELLYN SMITH : The law of Germany apparently gives only ten years for photographs.

Mr. ASKWITH : It may be noticed that certain gentlemen who gave evidence at the top of page 17 with regard to photographs suggested 50 years.

Sir H. LLEWELLYN SMITH : That is what I was speaking of ; I knew somebody had made a suggestion not based on life.

The PRESIDENT : I think that ridiculously long.

Sir H. LLEWELLYN SMITH : But it is not based on the principle of life.

The PRESIDENT : Perhaps we might discuss the other question apart from photographs, because they are specially reserved, and I think they might go in with pantomimes.

Mr. ASKWITH : Photography is an art which is in its comparative infancy. There were productions shown to us, the most beautiful kind of photographs, quite different from anything I had ever seen before—the highest kind of photographic art.

The PRESIDENT : Perhaps we might discuss, which is of more importance really, the question of books and the question of artistic works of art. I should like to know what would be the views of the delegates there because I have not had an opportunity yet of submitting this question or any of the questions to my colleagues in the Cabinet, and, therefore, I must reserve what I may have to recommend until

further consideration with them. But I should like to know very much what would be the views of the other delegates, so that I may be in a position to say how far we are agreed or how far we differ in regard to the question of the term. We might take books at all events first. The suggestion here under the Berlin Convention is 50 years after death, the present term being seven years after death or 42 years, whichever is the longer term. Lord Tennyson, I think you would like to express your views.

Lord TENNYSON : I only want to say that the one thing about which writers of books and artists are most insistent is the life and 50 years. There was a large committee held in London not very long ago, and that was the one thing they all insisted was absolutely necessary to have any justice at all.

The PRESIDENT : Did they take 50 years as the basis ?

Lord TENNYSON : Fifty years was the basis.

The PRESIDENT : On what ground did they take 50 years—for a round figure ?

LORD TENNYSON : No, at present it is 42 years from the date of publication, and it would not be much help if it was life and 30 years ; 50 years would be some help. I might also read this telegram that I have got from the Commonwealth : "If United Kingdom and other countries Copyright Union agree extension 50 years 'unlikely Commonwealth would not accept alteration.'" That is the one point upon which authors, publishers, musicians, and artists are agreed—the one point they are agreed upon strongly.

The PRESIDENT : I suppose they would prefer 100 years.

LORD TENNYSON : They would prefer 100 years certainly, but that is not suggested ; 50 years is better than the present term ; 30 years is not, according to their views. It would be most unfair. They might possibly agree to 40 years.

The PRESIDENT : Of course, there is the public. Those you mention, of course, are all quite rightly interested in the extension.

LORD TENNYSON : But are you making this for the benefit of the public or for the benefit of the authors, because it seems to me that it is for the benefit of both.

The PRESIDENT : Both—that is the object.

LORD TENNYSON : In the interest of both I think you ought to extend it to 50 years.

Mr. LAW : It was maintained that the public were not losers.

LORD TENNYSON : The public are not losers.

Mr. LAW : But the publishers did not care to take up works which had fallen into the public domain because there was always the risk of somebody else taking it up—somebody who wanted to trade at a loss to make a start or something of that kind—and then the publishers were really afraid to touch a work that had fallen into the public domain.

The PRESIDENT : Did you have any evidence, Mr. Law, or did it come to your knowledge at all from publishers or other people, or in any other way, what sort of proportion of books would be benefited ? Was it a very minute business ?

Mr. LAW : It was all the more important—the great works. We had the evidence of young Mr. Meredith with regard to his father's works, not as regards 50 years exactly, but generally on the extension, because he said that the most important and most highly prized of his father's works would very shortly fall into



the public domain, and as he came into fame very late in life, he had really received very little remuneration from his great efforts, whereas had the term been larger his family would now benefit considerably.

The PRESIDENT: Do you mean really that for those books he would have a term of something like 80 years?

Mr. LAW: Not from the time of death.

The PRESIDENT: I meant 80 years from the publication.

Mr. LAW: From first publication.

The PRESIDENT: He must have written them nearly 40 years or 30 years before his death.

Mr. LAW: Yes. There is also the consideration that we had as a member of the Committee, Mr. Bowerman, who himself began life as a compositor, who happened to sit by me a considerable part of the time, and that was a point he was anxious about, and I think he was quite convinced that his branch of the trade, which after all is very much the same as that of publisher—the printing trade and the operative printer—was not opposed to the extension because they did not think they would lose.

The PRESIDENT: Do you mean that the prolonged length of time would not keep the book out of the market, but it would come in a different form?

Mr. LAW: Yes, and that recently there was the system of cheap reprints, and they quoted instances of novelists who were glad to see their books very widely diffused at a very low rate.

The PRESIDENT: I think those are probably people the 50 years would not affect in one way or another. Very few novelists published in a cheap form would expect their vogue to last 80 years.

Mr. TEMPLE FRANKS: The question is whether this extended period would not benefit the publishers a great deal more than the author.

Mr. LAW: That was another point which was put; I put it myself—is it not the case that young men of genius sell their books to publishers, and derive no farther benefit from them? They said that now authors were fully alive to their position and that they did not do so—they dealt on the royalty system, and they also allowed them copyright for a certain number of years, and so on; they did not part with their full control over the copyright. There was a change of practice in the trade between author and publisher.

The PRESIDENT: I wonder what information—I am looking at it from the point of view of having to defend this proposal—one could get from the old-established publishers, those who have been going on 50 years and more publishing books—as to what sort of proportions there are and what sort of books they are, because it would make an immense difference to one's powers of arguing it if it could be shown that there really was a case.

Mr. LAW: They are the best people who last the longest.

The PRESIDENT: The general impression is that, as a matter of fact, a very small proportion last for 50 years.

Mr. LAW: It is a very small proportion; from the evidence we had it was only the works of a great genius which lasted for that length of time. I think the Conference might consider that unless you put before Parliament in your Bill a period of 50 years, you probably will not eventually get your 30, whereas, if you propose 50, you have something to give away.

LORD TENNYSON: You might get 40.

The PRESIDENT: 30 might be accepted as a good round figure.

LORD TENNYSON: Forty is a better round figure. It would be a compromise between the 30 and the 50.

Sir THOMAS RALEIGH: There is this point against 30 years, that it gives much less than the law gives now.

LORD TENNYSON: That is my point.

The PRESIDENT: What do you say, Sir Thomas?

Sir THOMAS RALEIGH: In the case of a man who lives 10 years after writing a book and then dies, under the present law he would have 32 more years.

LORD TENNYSON: I think I ventured to point that out yesterday. Now, for instance, my father published a book of poems in the last year of his life, and I got 42 years' copyright for that. If I were under your proposal for 30 years, I should be docked of 12 years.

The PRESIDENT: It is not my proposal.

LORD TENNYSON: That really means, if I may point it out to you, that the copyright of the whole works goes to the public domain earlier. Do I make myself clear?

The PRESIDENT: I am afraid not—not that last point.

LORD TENNYSON: The public, as a rule, like to buy the whole of the works. They therefore do not like to buy works without the last volume of poems in. The last volume of poems was, as I say, published in the year of my father's death, and that runs for 42 years. That gives me the copyright for the whole of the works practically for 42 years. If you dock it down to 30 I lose 12 years.

Mr. FISHER: It cuts both ways.

LORD TENNYSON: Yes.

Sir H. LLEWELLYN SMITH: Yes, you gain on the earlier works.

The PRESIDENT: It is as broad as it is long; I should think it was longer than it was broad on the 30 years.

Mr. FISHER: There is no equality of advantage as long as you adopt the life period. Your real period of protection is irregular according to the particular work, and I think under those circumstances one has really to adopt a compromise which may be somewhat medium in its amount of protection. If a man dies very soon after publication of his last work, with 50 years he would not get at all an unduly long protection; if he should live for 40 or 50 years after his first publication, he would get 90 or 100 years of protection, which is rather an unduly long protection, I think. I think, therefore, we have to adopt a medium so as to give a fair protection in all cases.

The PRESIDENT: What do you think, Sir Richard?

Sir RICHARD SOLOMON: I am afraid I have no opinion upon this at all.

The PRESIDENT: Mr. Hall Jones and Sir Edward Morris are not here.



LORD TENNYSON: As this is a very important point, would it be possible to ask Lord Gorell to attend one of these meetings, and give us the views of his Committee upon it, because it was an extremely strong Committee, you know, and very impartial?

The PRESIDENT: We have before us the report and we have Mr. Law and Mr. Askwith, who were both members of the Committee, who could therefore give us their views.

Mr. LAW: Perhaps I might point out that Mr. Scrutton, who is now Mr. Justice Scrutton, a judge of the High Court, is probably the greatest authority on copyright in the kingdom, and he signed that report, generally acquiescing in all the proposals except that with regard to architecture. I think his opinion certainly is deserving of very great weight.

Sir RICHARD SOLOMON: I suppose it is very important in this matter to have uniformity not only between Great Britain and her Colonies but between the different countries of the Union.

The PRESIDENT: The other countries of the Union have agreed.

Sir RICHARD SOLOMON: What is Germany going to do?

The PRESIDENT: We do not know.

Mr. TEMPLE FRANKS: At present they have refused.

The PRESIDENT: In what sense.

Mr. TEMPLE FRANKS: In the new Bill they are bringing in they have not extended it.

The PRESIDENT: Is that a Bill they are now passing?

Mr. TEMPLE FRANKS: Yes, so I understand. The difficulty with regard to the extension of time and so on is to get evidence against it. It is easy enough to get the evidence of course of literary men, publishers and artists.

Mr. LAW: I suggested to Mr. Bowerman, representing the printing trade, whether he could not get evidence against it, but he did not produce any.

Mr. TEMPLE FRANKS: It is the general public after all; it is a desire to obtain literature in its cheapest form.

Mr. ASKWITH: A desire the satisfaction of which entirely depends on the law of supply and demand; if the public want literature cheap and want to read it they will get it cheap.

Mr. TEMPLE FRANKS: I do not know, it is like railways after all, if you allow a monopoly, you allow the monopoly to control the price.

LORD TENNYSON: That is not true in literature.

Mr. TEMPLE FRANKS: It may not be, and I do not suppose it is. I only point out that there is a difficulty in getting evidence.

Mr. FISHER: If I may draw attention to Mr. Joynson Hicks' dissension from the report of the Committee, he points out the fact that all the evidence was from those who were "interested in the extension of copyright, such as, for instance, " representatives of the Royal Institute of British Architects, the Artistic Copyright Society, the Institute of Decorative Designers, the Society of Authors, the Copyright Association, the Music Publishers' Association, the Society of British Composers, " and the International Literary and Artistic Association. On the other hand, the

" only two witnesses who were called on this point representing the general public, " or, at all events, the non-copyright division of the community, viz., Mr. H. Vane " Stow, representing the Federation of Master Printers, and Mr. J. E. Hough, repre- " senting the Users of Mechanical Musical Instruments, were opposed to an extension " of the term," and Mr. Joynson Hicks himself says, "I have no interest in authors, " musicians, or other copyright sections of the community, and I have assumed that " I was asked to join the Committee in order to represent the view and safeguard " the interests of the general public, and I am bound to say that I have read no " evidence submitted to our Committee which has made me feel, after giving due " allowance to the requirements of the general public, that the term should be " extended as proposed by the Berlin Convention."

Sir RICHARD SOLOMON: Was Mr. Joynson Hicks the only one on the Committee who dissented on that question?

The PRESIDENT: Was he the only dissentient? Did Mr. Trevor Williams touch upon that point?

LORD TENNYSON: I think he was the only dissentient.

Sir H. LLEWELLYN SMITH: It is very difficult to get evidence from the general public; a person with slender means, to whom it matters a great deal as to whether he has to pay a half-crown or a shilling for a book, is not likely to come and give evidence before the Committee. You can imagine their existence, but they do not appear as witnesses.

Mr. ASKWITH: I may point out that Mr. Joynson Hicks does not properly represent the evidence given by Mr. Hough, which is of the very slightest character, in answer to question 2,849; and also Mr. Bowerman, who signed for life and 50 years, is one of the labour members of Parliament and was Secretary of the Printers' Union and had been President at a Trades' Union Conference where the printers had gone against life and 50 years, and after hearing the evidence he voted in favour of it.

The PRESIDENT: I do not know if anyone has anything further to say.

LORD TENNYSON: I would like to call your attention to what M. Maillard said, because his evidence is all extremely important.

The PRESIDENT: Yes, I know it, I have been very carefully over it. I have listened to what has been said and we shall have it on the record, and I shall consider it. In this matter I have not got a free hand; I shall have to consult my colleagues in regard to it to see what sort of view the Government as a whole take. It is not a matter of reservation. It is a question of an Imperial Act and in these cases I am bound to say it is a question, to a certain extent apart from its merits, of what you can carry through the House of Commons; it might prevent the whole Bill being passed. Those are the points I have to consider.

There is one other point in connection with it—I do not know whether you would like to consider it—raised by Mr. Temple Franks just now, that is to say, that assuming that  $x$  is the term of years for books, whether the same term should be suggested for what we call the fine arts, or whether it should be a shorter term. I do not know whether any member of the Conference has any views with regard to that, or whether whatever term is fixed for books the same should be fixed for fine arts; Sir Richard, have you any views on that?

Sir RICHARD SOLOMON: I think the period should be the same for everything.

The PRESIDENT: Mr. Fisher, have you anything to say?

Mr. FISHER: No, our law is uniform for all kinds of copyright.

The PRESIDENT: And that would carry this whether it is 30 years or 50 years.



Mr. FISHER: Yes, photographs being excluded.

Mr. LAW: You have no copyright at all for gramophone records, for instance?

Mr. FISHER: No.

The PRESIDENT: I do not call that a fine art.

Mr. LAW: There is a good deal of art in it.

Mr. TEMPLE FRANKS: Is your copyright for sculpture and engravings the same?

Mr. FISHER: Yes. Are we going to discuss the question of gramophones?

The PRESIDENT: In a minute. What, Lord Tennyson, would be your view as regards books and fine art, taking fine art in the better sense of the term?

LORD TENNYSON: I think copyright ought to be uniform, certainly.

Mr. TEMPLE FRANKS: As to these plans, sketches and plastic things. I was rather suggesting a division between the fine arts, books, music, painting, &c., on the one side and the rest of these things on the other.

The PRESIDENT: Are not these dealt with separately?

Mr. LAW: You mentioned sculpture; do you not include sculpture as a fine art?

Mr. TEMPLE FRANKS: Yes, but I do not think I would engravings at the present day. I am not quite certain.

Mr. ASKWITH: That indicates the difficulty there would be in differentiating without impinging upon the theory of uniformity. You might just as well try to draw the line between good and bad pictures. It is entirely a matter of opinion.

The PRESIDENT: An engraving, I think, must be put among the fine arts.

Sir H. LLEWELLYN SMITH: But engraving and lithography are of course arts—and etching and steel and wood engraving—but as regards photo-lithographic processes, which are purely mechanical, and which enable you to reproduce a picture by mechanical means, I do not think they ought to be counted as engravings, they should be assimilated to photography.

Mr. LAW: The difficulty again as to photography is that all these people claim that there is a great deal of working-up and touching-up which constitutes a high degree of artistic merit.

The PRESIDENT: Not much brain work.

Mr. LAW: In the touching-up of the photographs there may be a certain amount of artistic merit.

Sir H. LLEWELLYN SMITH: That is not a claim one could admit. It does not make the work a work of fine art.

Mr. LAW: I do not take the view, but I am only saying what the view was.

The PRESIDENT: I am bound to say that if it was finally decided to adopt 50 years I think it would be quite impossible to propose that it should be applied to some of these things, like lithography, illustrations, geographical charts, plans, sketches, topography, and so on. Otherwise the Bill would break down. The same as to mechanical records. In speaking before of fine arts I meant painting, sculpture, and so on, which are commonly called fine arts. These minor matters, to my mind,

clearly must have a shorter term if we are to carry any extension of term at all. Is there anything in the serials, Article 9, Mr. Askwith—is there any point in that we ought to consider—Article 9, page 4, at the bottom of page 40? Article 8 is only the question of unpublished works, and so on.

Sir H. LLEWELLYN SMITH: There are many important points.

The PRESIDENT: There is no dissent, is there?

Sir H. LLEWELLYN SMITH: I think, perhaps, I might mention this: the moment we come to draft a Bill we are met with the fact that the law at present in this country with regard to copyright in published works is statute law, but as to unpublished works it is perpetual copyright under the common law, is not that so?

Mr. LIDDELL: Yes.

Sir H. LLEWELLYN SMITH: And the question is whether we should attempt now to bring the whole thing into one Act or leave the existing perpetual common law rights in unpublished matter—unpublished manuscript—as it is. Our view and that of Mr. Liddell is in the direction of trying to bring them all into a statute, but it is a very important point on principle. It is not dealt with so much by the Convention. I notice, however, that Article 8 deals with the question of authors of unpublished works, and that is the point at which to raise it. Do you see any difficulty, Mr. Liddell, in bringing them all into a Bill?

Mr. LIDDELL: No great difficulty.

Mr. ASKWITH: It would be much more simple if you could.

Sir H. LLEWELLYN SMITH: If you could do it, it might assist us in this great distinction between an unpublished work of art and a mechanical reproduction.

The PRESIDENT: Perhaps I may say in this connection that, with the heads circulated to delegates, we would have a covering memorandum to draw attention to the various clauses, showing what they meant, drawing attention to any particular point as a new proposal, so that the delegates will be able to see whether they can support it or not.

Sir RICHARD SOLOMON: In the case of an unpublished work would you protect it merely for the life of the author and 50 years afterwards?

Sir H. LLEWELLYN SMITH: No.

Sir RICHARD SOLOMON: When would the protection begin to run?

Sir H. LLEWELLYN SMITH: At present it is perpetual.

Sir RICHARD SOLOMON: From publication? Supposing it is published after his death.

Sir H. LLEWELLYN SMITH: Of course a posthumous work has to be considered separately here. I think it is 50 years after publication in that case.

The PRESIDENT: It is dealt with in a later paragraph.

Sir RICHARD SOLOMON: Yes.

Sir H. LLEWELLYN SMITH: Sir Richard, that is why the definition of publication is so important if we are going to bring in unpublished works.



Mr. FISHER: If I might refer to one other matter, I think Article 8 will have to be considered a little in connection with Article 6—"the authors of works first published in one of those countries"—that seems to me to cover the same point we have reserved for consideration in Article 6.

The PRESIDENT: Yes.

Mr. FISHER: I just wish to bring to your attention, so that in considering Article 6 you will have it in mind, "the authors of works first published in one of those countries" would include aliens, I think.

Sir H. LLEWELLYN SMITH: Yes, it was intended to.

The PRESIDENT: We will note it.

Mr. FISHER: Thank you.

The PRESIDENT: Article 9—what is the special point about that, Mr. Askwith?

Mr. ASKWITH: It is a very small alteration—that articles in newspapers should receive more protection.

The PRESIDENT: If they expressly forbid reproduction. They can get copyright, in fact, as long as it is not news.

Sir H. LLEWELLYN SMITH: I remember this gave rise to a great deal of discussion at the time when you were at Berlin, Mr. Askwith, but the ultimate shape has not been objected to.

Mr. ASKWITH: No, there was no objection.

The PRESIDENT: Not by the newspapers?

Sir H. LLEWELLYN SMITH: You may be quite sure that the newspapers would raise every point they could.

The PRESIDENT: There were raised on the "Times" case.

Mr. ASKWITH: Some newspapers would wish to go further, but I think, if you gave in further to the newspapers, you would have the Institute of Journalists on your heels. The "Times" pointed out that they went to an enormous expense very often in getting hold of a fact, and that a fact ought to be protected; and they gave two instances. One was the assassination of President Balmaceda in Chili—that they had a man out in Valparaiso for years who had never sent them any information, and one morning he telegraphed that the President had been assassinated, and they wired back to send full report regardless of expense, and it cost them a large sum. Within a very short time after they published this, two evening papers came out with an earlier edition, earlier than ever before, with the account given in the early edition of the "Times," and details of their own were added which had been invented. This meant that all the expense the "Times" had gone to was wasted. The other instance Mr. Moberley Bell gave me was that he sent a man to the opening of the Hadji Railway. He telegraphed a long description of the opening, and the whole thing cost the "Times" many hundreds of pounds. The same thing happened; the evening papers came out with very early editions and published this telegram, and the "Times" said, "We ought to have some protection for our enterprise in doing that sort of thing, even if it is only to prevent newspapers copying from us within so many hours after we publish the fact."

Sir H. LLEWELLYN SMITH: But the other journalists would not have it. They said the pace at which they work would make any such rule a great hindrance.

Mr. ASKWITH: It seems to me that in a general Copyright Bill it would be inadvisable to include this point. In a case of this sort, if the newspapers were strong enough, they should promote a Bill of their own.

The PRESIDENT: Do you not think it would be an unfair thing? You see in the first part of the clause that the source must be indicated. Supposing one newspaper simply took news from another and failed to indicate the source?

Mr. ASKWITH: Mr. Phillips points out to me as regards Southern Australia, Western Australia and Tasmania, that their Acts in the first case give protection to newspaper telegrams for 24 hours from first publication, or 36 hours from receipt, whichever period is the shorter; Western Australia gives protection to newspaper telegrams for 72 hours from first publication, and Tasmania gives protection to newspaper telegrams for 48 hours after first publication.

Sir RICHARD SOLOMON: I think in all the South African Colonies they give protection to newspaper telegrams.

The PRESIDENT: There is some justification for that, because they necessarily must run up to a considerable sum.

Mr. ASKWITH: The Cape of Good Hope protect newspaper telegrams for 120 hours after publication, or 130 hours after receipt, whichever is the shorter.

The PRESIDENT: I have no doubt there may be some difficulty over this clause, but I think we must adhere to the Convention with regard to it.

Mr. ASKWITH: Possibly amendments might be made in Parliament by somebody interested in newspapers, and the exact form in which they wanted relief might then be considered.

The PRESIDENT: Article 10 is the same as at present. As to Article 11, what is the point of that?

Sir H. LLEWELLYN SMITH: Article 11 is an important one, because it removes the obligation to reserve the right of performance of a musical work, and, if I remember rightly, our adherence to that was subject to a statement in the Conference which appears in the *procès-verbal*, that we understood that it would not affect our right to refuse damages—to throw the onus of proof—I forget the wording of it, but it was to prevent the innocent infringer being punished.

LORD TENNYSON: This is to make it uniform with the law of other countries; other countries have got this.

Sir H. LLEWELLYN SMITH: Some of them have.

LORD TENNYSON: It is one of the most important points.

Mr. ASKWITH: There is a very full report on page 20 of the Committee.

Sir H. LLEWELLYN SMITH: We would not adhere to this without this statement being put in: "The British delegates recognised the value of the proposed change and were desirous that the authors should be protected, but were anxious as to the situation of persons who considered in good faith that they were able to perform musical works on which they saw no mention of a reserve, and they were therefore desirous that they should not be exposed to severe penalties. The reply was given that the Convention imposed the obligation of protecting authors, but without specifying the form of the protection. Each country is free to legislate in this matter, to take into account the circumstances under which the infringement was committed, and to graduate the penalties according to the circumstances."

The PRESIDENT: That will be rather a case for the Bill, to see how we can meet that point.



Mr. ASKWITH: The Committee were very strong on the necessity of abolishing the requirement for notice at present required by the British law.

LORD TENNYSON: I think that this ought to be carefully considered.

Sir H. LLEWELLYN SMITH: For the existence of copyright.

LORD TENNYSON: Yes.

Sir H. LLEWELLYN SMITH: But not for getting penalties.

The PRESIDENT: The next is Article 12. These are unlawful reproductions of original work. Then we come to the gramophones. Has anybody any views about the gramophones? I do not think these musical records ought to have quite so long a period.

Mr. ASKWITH: I think they ought to be left to make the best bargain they can and not imperil the Bill.

The PRESIDENT: That is not at all a bad suggestion.

Sir H. LLEWELLYN SMITH: I think we should indicate in what direction we should bargain—whether we wish to give the least possible protection to the owners of the music or the greatest possible protection.

The PRESIDENT: I should say we should give the medium protection.

Sir H. LLEWELLYN SMITH: This is the protection to be given to the author of the musical work, not to the gramophone people.

Mr. ASKWITH: It is all mixed up.

The PRESIDENT: It is the authors of the musical works who are in this case to have protection.

Mr. ASKWITH: I do not think there is any disagreement as to the author of the musical work having protection.

Sir H. LLEWELLYN SMITH: For life and 50 years.

Mr. ASKWITH: Yes.

LORD TENNYSON: I was asking Sir Charles Stanford, and he said there was a strong feeling among musical people about that. The Attorney-General of Australia (Mr. Hughes) wrote (received February 6th, 1909) on the extension of scope of Copyright to musical authors to include mechanical records of musical works: "I think such an extension is desirable, and that Lord Tennyson should be instructed to favour it on the part of Australia."

Mr. ASKWITH: And even as to the gramophone people the question arose as to on what terms the gramophone people were to have granted them the power to reproduce. The gramophone people want a compulsory licence—that is what they are after.

The PRESIDENT: I do not think anybody here is taking much interest in this particular point, but we had better see what we can do upon it, going as near the Convention as we can.

LORD TENNYSON: A compulsory licence is absurd in England.

The PRESIDENT: This does not give a compulsory licence, does it?

Mr. ASKWITH: No, we were dead against the compulsory licence, but it has been given in America and the Germans propose it too in their Bill.

The PRESIDENT: We must see about that. Then the cinematographs—there is nothing in that, is there? That is very much on the same lines. Then we have got this Article 15, as to which nobody seems quite to know what it means. At all events, it is not a new one, so I think we had better take it as it is. Then Article 16, that pirated works may be seized—that is all right. Article 17 is all right. As to Article 18, this was raised last time—the question of the expiration of the term of protection—and I rather think the feeling of the Conference was that if the Copyright had fallen in for any reason, the work should not receive further protection, it should not be only through the expiration of the term of protection. I am not sure from the wording that that really was intended. What do you think, Mr. Askwith?

Mr. ASKWITH: There was a point as to whether, if it had fallen into the public domain in the country of origin for not complying with certain formalities, that was a just reason for taking away the copyright; but the Committee said that they did not quite understand what the meaning of the wording was, and they suggested that on the whole it would have to be considered whether this should be included in the Convention unless the meaning was made clear, and they thought the meaning was—

LORD TENNYSON: That the right ought not to be revived if it is lost.

The PRESIDENT: The only point is if it has been lost through some technicality, but I think they must take the risk of that. Was that the impression left in your mind too, Mr. Law?

Mr. LAW: Yes.

The PRESIDENT: Then our Bill will take the line that if it has fallen into the public domain it shall not be revived.

Sir H. LLEWELLYN SMITH: And if it has not fallen?

The PRESIDENT: Then it will receive the extension.

Sir H. LLEWELLYN SMITH: The Convention is silent as to who is to get it.

The PRESIDENT: Yes, that is the point you made yesterday, Sir Richard. I should have thought the author was the person who would in the ordinary course have received the copyright, because if he has already parted with it, he has parted with the new additional years for no consideration, and I should think it ought to belong to him and not to the person to whom he has parted with the copyright.

Sir H. LLEWELLYN SMITH: Ought not the person to whom he has parted with his existing rights to have, so to speak, the first claim? It seems rather hard that he should be able to sell his new rights to another publisher.

The PRESIDENT: Who is to settle the price?

Sir RICHARD SOLOMON: Do not the Committee recommend that if they cannot agree upon the terms, the Board of Trade should appoint someone?

Sir H. LLEWELLYN SMITH: That is the Committee's recommendation.

Mr. LAW: Yes, it was practically an arbitration proposal, because the publisher has a very strong interest in the work and it affects him very much. He expected to have the free use of this work on the expiration of the term, and he finds by the operation of this extension he is deprived of that; it is taken out of his hands and may be given to somebody else. So that there is considerable interest involved.

Sir H. LLEWELLYN SMITH: Or the author might, if he is a very businesslike man, extort a very excessive consideration from the existing publisher.



The PRESIDENT: On the other hand, looking at it the other way, the publisher has obtained for a certain sum, thinking it would run for a certain period, a property which is now of greater value because it has had added a certain number more years according to the term we fix.

Sir RICHARD SOLOMON: He does not get the new rights for nothing.

The PRESIDENT: Yes, if it goes to the publisher.

Mr. LAW: I think so, clearly.

Sir RICHARD SOLOMON: Yes, if it goes to the publisher.

The PRESIDENT: Then we will consider the matter in the Bill. Then Article 19, has anyone anything to say on that? Mr. Fisher, will you look at that? "The provisions of the present Convention shall not prevent a claim being made for the application of any wider provisions which may be made by the legislation of a country of the Union in favour of foreigners in general." What does that mean?

Mr. FISHER: My case is rather whether there should be less—narrower, not wider. I think if it was to be read the other way it would serve my purpose very largely.

Mr. ASKWITH: But there is no harm in it, and it really gives elasticity to any country that chooses to make it. It is more declaratory than anything else.

Mr. FISHER: I must confess that the Union seems to me to give so many privileges to foreigners that there is not much room left to make it wider.

Sir H. LLEWELLYN SMITH: I think this has not that meaning. I think what it means is that supposing any particular country of the Union has by its legislation given greater favours to foreigners in general than are included in this Convention, every country of the Convention could claim under the most favoured nation principle "the application of any wider provisions which may be made by the legislation of the country of the Union in favour of foreigners in general." It would not be open therefore to a country in the Union by a special treaty to give better terms to a country outside the Union than it gives to countries within.

Mr. FISHER: I think that is the meaning of it.

Mr. TEMPLE FRANKS: Mr. Fisher cannot conceive of better terms.

Mr. FISHER: That is the point.

The PRESIDENT: Then the next Articles, 20 to 24, are all right, and Article 25 raises the question of the legal rights of States outside the Union. "States outside the Union which make provision for the legal protection of rights forming the object of the present Convention may accede thereto on request to that effect"—that is to say, they can join.

Mr. LIDDELL: Yes.

The PRESIDENT: Is there anything on Article 26? We did discuss it just now. I take it there is no question about it.

Mr. FISHER: No.

Sir THOMAS RALEIGH: I should like to know exactly what is meant by "foreign possessions" in Article 26. "For their colonies or foreign possessions."

The PRESIDENT: It is the same wording as the Berne Convention, and India has acceded to that—ratified it—so I suppose it has been included. Would not that cover your point?

Sir THOMAS RALEIGH: I think so.

The PRESIDENT: You see it is the same wording; it is not altered. You mean you are neither a colony nor a foreign possession. I think you are a British possession.

Sir THOMAS RALEIGH: It might be argued, but of course it does go back to the old one.

The PRESIDENT: I think that is the answer—that you have already been able to ratify with the same wording.

Sir THOMAS RALEIGH: I think so.

(It was agreed that the Resolutions should be circulated to the Members of the Conference and that they should meet again on Monday next at half-past 3 o'clock.)

### THIRD DAY.

Monday, 23rd May 1910.

#### PRESENT:

The Right Hon. SYDNEY BUXTON, M.P. (*President of the Board of Trade*)  
(*in the Chair*).

Sir H. LLEWELLYN SMITH, K.C.B. }  
G. R. ASKWITH, Esq., C.B., K.C. } (*Representing the Board of Trade*).  
W. TEMPLE FRANKS, Esq. }

H. W. JUST, Esq., C.B., C.M.G. (*Secretary to the Imperial Conference, representing the Colonial Office*).

A. LAW, Esq., C.B. (*representing the Foreign Office*).

F. F. LIDDELL, Esq. (*of the Parliamentary Counsel's Office*).

The Hon. SYDNEY FISHER, accompanied by P. E. RITCHIE, Esq. (*representing the Dominion of Canada*).

The Right Hon. LORD TENNYSON, G.C.M.G. (*representing the Commonwealth of Australia*).

The Hon. W. HALL JONES (*representing the Dominion of New Zealand*).

The Hon. Sir RICHARD SOLOMON, K.C.B., K.C.M.G., K.C.V.O., K.C. (*representing the Cape of Good Hope, Natal, Transvaal, and the Orange River Colony*).

Sir THOMAS RALEIGH, K.C.S.I. (*representing the India Office*).

A. B. KEITH, Esq. (*of the Colonial Office*), and } *Joint Secretaries*.  
T. W. PHILLIPS, Esq. (*of the Board of Trade*) }

The PRESIDENT: I have circulated to the members of the Conference the various Resolutions to which we provisionally agreed the other day. We have also been very carefully considering Article 6 to see what we could do, and I suggested certain words to Mr. Fisher—I have not had the opportunity of discussing them with him, but perhaps in a few minutes when we get to it he will be able to say how far he thinks they will meet his views. I suggest that we might first take these Resolutions, to which, as I understand, subject to an agreement on Article 6, we are all agreed. You, Lord Tennyson, moved the original Resolutions. We have been very



informal, and I thought it met with the general approval that we should be informal in these matters (they are on record) rather than move them formally, and it rather suggested itself to my mind whether, on the whole, as we have now agreed on the amended Resolutions, I should move them from the chair, not as representing the British Government but as the President of the Conference, if they are, as I understand, agreed-on Resolutions. But I am entirely in your hands if you prefer to move them.

LORD TENNYSON: I think it would be much the best to do as you suggest.

The PRESIDENT: That being so, I will just move them one by one and read them. Mr. Fisher, you quite understand that these are moved and agreed to, if they are agreed to, subject to our discussion on clause 6. I quite understand your position about that.

Mr. FISHER: Yes.

The PRESIDENT: The first is: "1. That this Conference recognises the urgent need of a new and uniform law of copyright throughout the Empire, and recommends that an Act dealing with all the essentials of Imperial copyright law shall be passed by the Imperial Parliament." Is that agreed? I will not have it, if you do not mind, formally moved and seconded, because I think this should simply be moved by me as President of the Conference and not as the President of the Board of Trade. Is that agreed? [Agreed.] "2. That the Act shall be expressed to extend to all the British Possessions. Provided that the Act shall not extend to any self-governing Dominion except with the assent of such Dominion." Is that agreed? [Agreed.] "3. That as from the date on which the new Imperial Act takes effect, the existing Imperial Copyright Acts shall be repealed so far as regards the parts of the Empire to which the new Act applies, and any self-governing Dominion not adopting the new Act, may by Act of its Legislature amend or repeal the existing Imperial Acts so far as relates to that Dominion subject to treaty obligations." Is that agreed?

Sir H. LLEWELLYN SMITH: Mr. President, I am under the impression that a verbal alteration was made in the wording "so far as relates to that Dominion" and it was amended to "so far as they are operative within that Dominion." I think this is the old text.

The PRESIDENT: I think there was that alteration "so far as operates."

Mr. TEMPLE FRANKS: I have my own note "so far as they are operative within that Dominion."

The PRESIDENT: Shall I read that with the alteration "so far as they are operative within that Dominion"?

Mr. FISHER: Yes, that is better.

The PRESIDENT: That is better; I had forgotten that that had been altered. Is No. 3 agreed as altered? [Agreed.] "4. That this Conference having considered in substance the Berlin Convention, recommends that the Convention shall be ratified by the Imperial Government on behalf of the various parts of the Empire, and that, with a view to uniformity of international copyright, any reservations made shall be confined to as few points as possible. Provided that no ratification shall be made on behalf of a self-governing Dominion until its assent to the ratification has been received." Is that agreed?

Mr. HALL JONES: I look upon that as the only doubtful Resolution, inasmuch as it appears to include too much.

The PRESIDENT: Which part?

Mr. HALL JONES: "Recommends that the Convention shall be ratified by the Imperial Government on behalf of the various parts of the Empire." The Convention is the Berlin Convention?

The PRESIDENT: Yes.

Mr. HALL JONES: "Shall be ratified by the Imperial Government on behalf of the various parts of the Empire, and that with a view to uniformity," and so on, the reservations shall be as few as possible. I thought it was the reservations we were going to discuss now.

The PRESIDENT: You were not at our last meeting, and the position was this: we did discuss matters of detail, and we practically came to the conclusion that there were only one or two points on which we need make any reservation. These are points which are to be circulated to the members of the Conference in the form of heads of clauses for a Bill for their consideration, and I think the unanimous conclusion of the Conference was that we should make as few reservations as possible. As regards the ratification by the Imperial Government on behalf of the various parts of the Empire, that has to be done by the Imperial Government under the Convention on behalf of the Colonies. You will see that the final clause is a proviso enabling any self-governing Dominion either to stand out or to ratify subject to certain conditions.

Mr. HALL JONES: I am afraid we shall not get what, I believe, we all desire, that is, an Imperial Copyright law. I regret that I was unable to be at your last meeting, but there is the reference to architecture, for instance, and the term of life and 50 years. I believe they are sufficient, if persisted in, to prevent some of the self-governing Dominions adopting the Act.

The PRESIDENT: As regards architecture, we considered that last time, and we will deal with it in a minute. There is a Resolution which has been circulated, of which you have had a copy, in which with considerable ingenuity Sir Herbert Llewellyn Smith, I think, has really met the difficulty which was anticipated. We agreed to it, subject to our discussion to-day.

As regards the period, that is not a question really which comes in the Convention; that is to say, we can ratify the whole of the Convention and reserve the period. It is a point which is specifically outside the question of ratification. Free local liberty is given to each country, and we have considered that matter, and I ventured to take the opinion of the various members of the Conference representing the Dominions last time on that matter, in order to know what it was; but I had still to retain the final decision on behalf of His Majesty's Government, because I have not yet had an opportunity of submitting it either to the Cabinet or, in the form of a Bill, to the House of Commons. Therefore I am still unable to say what may be the final decision with regard to that. Those are really the only two points on which I think any question arose, and in the one case I thought we hit on a happy solution, and in the other case it is not a question of ratification or not. Do you desire, on that point, to raise any question?

Mr. HALL JONES: The term of years is most important. The question of architecture is another point. These are the two features which struck me at our last discussion. There are some minor points similar in character, and I was only doubtful as to whether the Resolution did not go too far. However, I was not aware of the term of years being within the discretion practically of the different parties.

The PRESIDENT: Mr. Hall Jones, this is only a pious opinion, to which I think we should all agree, that we should confine the reservations to as few points as possible. It may turn out that there may be hardly any reservations.

Mr. HALL JONES: I thought in giving our opinions we should base our opinions on what we believe to be the opinions of the countries we represent.

The PRESIDENT: Quite.



LORD TENNYSON: It might make a good deal of difference if a clause were added, supposing the copyright was for life and fifty years, "Provided the works were sold at a reasonable price."

The PRESIDENT: I want to discuss that in a minute, but I do not think that should be in the general Resolution. We shall get into details in a minute about Article 6, and also the architecture.

Mr. FISHER: I was just going to say, if I may, Mr. President, that until the self-governing Dominions know what reservations the Imperial Government decides to make, we can hardly judge whether we will accord with those reservations, or, perhaps, have to make some special ones.

The PRESIDENT: That is, of course, governed by the last words.

Mr. FISHER: Yes, that is provided for; but I wanted to point out that at the present moment we could hardly say definitely whether we would agree to adhere on the same terms as the Imperial Government adheres on.

The PRESIDENT: I quite understand that is agreed. Those are the general Resolutions unanimously agreed. I did not put them very formally, but in each case I put them separately, and I understand the Conference agrees to those as general propositions. (Agreed.)

Now there are three further points I want to consider with the Conference. One is Article 6, which is a question of how far non-Union countries should be allowed the advantages and how far the members of the Union should be under the obligation to give them the advantages under the Convention. The second is the question of the architecture—buildings; and the third is the question of the term of years. Perhaps, Mr. Fisher, you would give us your views, if you will be kind enough, on the question of Article 6. We considered it very carefully with Mr. Law, representing the Foreign Office, with Mr. Liddell as our draughtsman, and with the other members representing the Board of Trade, and we suggested to you a form of words which, perhaps, you would kindly read and see how far you are able to agree to them; that is as regards Canada.

Mr. FISHER: These are the words which were sent to me by Sir Hubert Llewellyn Smith, and suggested, I suppose, as a modification of Article 6—an addendum to Article 6—

Sir H. LLEWELLYN SMITH: An addendum to the fourth Resolution; it was added to that.

Mr. FISHER: I think myself it ought to be rather a separate Resolution.

Sir H. LLEWELLYN SMITH: We did not know until we came into this room whether it would be the basis of discussion.

Mr. FISHER: I understand it is to be the basis for discussion.

The PRESIDENT: Would you mind reading it?

Mr. FISHER: "Provided also that it be made clear as regards any self-governing Dominion which so desires, that the obligations imposed by the Convention on that Dominion relate solely to works the authors of which are subjects or citizens of a country of the Union or *bona fide* resident therein." This deals, of course, only with the Convention, and I do not understand from this what is the view of the Imperial authorities—whether they wish to adhere to the Convention, Article 6 included, without any reservation. This is intended to make it clear that one of the self-governing Dominions, or any of them, need not adhere to the Convention without modification of Article 6; but, of course, that does not apply, apparently by the Resolution, to the Imperial authorities or to the Imperial Act.

The PRESIDENT: Of course, there were two alternatives really, both of which were provisionally discussed last time; one, that the Imperial Government should stand

outside, or rather should state that they considered Article 6 did not apply as a general proposition; and the other was whether we should meet the Canadian case, which was the only case, I think, of any Dominion affected, by a special clause which would also require special notice in ratifying, which would really imply standing out of Article 6. On the whole we came to the conclusion that the simplest way of doing it, likely to lead to least difficulty, whatever might be our views, would be to meet the Canadian case, which was the particular case in point, rather than raise the larger proposition. The larger proposition, would require a little more consideration, and of course it is a matter which I should have to raise in the Cabinet, and so on, as it might raise a copyright difficulty and a copyright war. It is quite clear that Canada has got to be protected. I do not think anybody will have any difficulty about that; and personally I think I should like to see that point carried through. But what I wanted to arrive at as far as Canada is concerned, who is interested in her own protection more than any other, was whether the suggested words would meet her view represented by you in protecting her as against the particular point raised in Article 6. It is quite an open question still whether we ought not, as it were, to denounce the whole of Article 6; but we have to look at that rather from the larger point of view, because it raises a very difficult question; it might raise a copyright war, which under the circumstances might not be expedient, and it might be fatal to the Bill too.

Mr. FISHER: Of course, as a member of the Conference, without being especially representative of Canada, I should urge on the Conference as a Conference to dissent from Article 6. I am now expressing my own personal opinion rather than as the representative of Canada. I consider that Article 6 is not a good Article in the International Union.

The PRESIDENT: I quite agree with you.

Mr. FISHER: That being the case, I would like to see this Conference as a Conference express that opinion, in guarded and diplomatic language perhaps, but really express that opinion. I appreciate that you, Mr. President, and those representing the Imperial authorities, may not wish to go quite so far as that, but I would be very glad to have that opinion expressed—in guarded language and as diplomatically as possible; and still I would like to see the Conference as a Conference express that opinion.

Sir H. LLEWELLYN SMITH: That is rather a Foreign Office matter. If these Resolutions, or any of them, are not to be made public, I presume we could go further than if they were.

Mr. FISHER: Up to the present, at any rate, I look upon all these things as confidential; I do not know whether I am right in that.

The PRESIDENT: They are strictly confidential so far, and of course we can cut out anything we do not think it expedient should appear; but some Report of the proceedings of this Conference will have to appear—probably each of your Dominions will wish to have it; and the worst of this particular point is that it does raise an acute question with the United States. I am entirely in accord with you; there is no difference of opinion—it is only a question of expediency, and it might be inexpedient, as it were, to express one's view here in the nature of a Resolution, and then find that we are not able really to carry it through for various reasons; so that it might really do more harm than good. What do you think, Mr. Law, of taking that as the sort of proposition we might have? (*handing a paper to Mr. Law*).

Mr. LAW: I think in principle it is a very proper thing to assent to—that we should not bind ourselves beyond the limits of the Union, but at the same time there is a certain amount of risk that the Americans may get on their hind legs on the subject. Personally I do not see why we should not pass a Resolution of that sort. It need not be followed by a change in our law; the United States might become alarmed about it, and be inclined to alter their legislation.

Sir H. LLEWELLYN SMITH: You mean that it might do good.



Mr. LAW: It might do good; it is one of those things as to which you cannot really tell what result will happen. I do not see why we should not have the courage of our opinions.

Mr. FISHER: I may say that so far as we in Canada are concerned, we are quite ready to have the courage of our opinions and to face the United States on it.

Sir H. LLEWELLYN SMITH: I cannot see that there would be any harm, Mr. President, if this Conference really takes the view that Article 6 is against the general interest, that they should convey that view through you to the Foreign Secretary.

Mr. FISHER: Yes.

Sir H. LLEWELLYN SMITH: I think he would have to use his discretion a little as to whether it should appear on the face of any paper.

Mr. FISHER: I do not wish to press at all that it should appear.

Sir H. LLEWELLYN SMITH: It might be very useful; on the other hand it might be inopportune.

Mr. FISHER: There is one point I should like to suggest for your consideration, speaking with regard to the United States. England and the British Empire occupies a quite different position as regards the United States from any of the other countries adhering to the Union, because the United States distinctly discriminates against the English language and does not treat the languages of the other countries in the Union in the same way, which is a matter which of course indicates to my mind that the British Empire has to take, and should take justly and fairly, a different position from other European countries with regard to this particular point.

The PRESIDENT: Might I just say, Mr. Fisher, that as regards opinion I do not think there is any difference of opinion whatever?

Mr. FISHER: I quite appreciate that.

The PRESIDENT: I should like to knock them over the head as hard as I can; in all these things I think they treat us perfectly monstrously. But at the same time it is just a question whether at the moment it is expedient to have a row with them on a question of this sort, and also how far, looking at this Bill we are anxious to get through, it would be likely to prejudice its chances of getting through, because our authors here are very nervous about American Copyright: a limited number of them, a certain number of them, are benefited from it, but if they thought we were going to raise the whole question of Copyright between America and England, it might prejudice the position. That is all I have in my mind: there is no difference of opinion, but if Mr. Law thinks it would do no harm to have this on record, I do not know why it should not be moved by one of you gentlemen there. I think I should not move it, because I shall have to represent the matter to my colleagues. You think, Mr. Law, that on the whole it would do good? This is the Resolution which we drew up—I will read it to you. There are two points; there is yours, Mr. Fisher, which is Canadian, and this is the general one we have also drawn and which we had to consider whether we moved it or not: "His Britannic Majesty's ratification is deposited 'subject to the understanding that the obligations imposed on His Majesty by the 'Convention are confined to works the authors of which are subjects or citizens of 'the contracting States or *bonâ fide* residents therein.'" That is to say, that as far as we are concerned we join as members of the Union and we give all the advantages and take all the obligations with regard to all other Union countries, but we do not give the advantages and do not take the obligations with regard to any country which has not joined the Union.

Sir H. LLEWELLYN SMITH: We do not pledge ourselves.

Mr. FISHER: You do not pledge yourselves.

The PRESIDENT: The only drawback or disadvantage of this mode of procedure is that we cannot do it off our own bat, as it were. This is the note given to me: "This is not a reservation which we are entitled under the Convention to make. It 'would be necessary to get the consent beforehand of the other signatory countries'; but still I think it is a question of their saying, 'We will not give it to you,' and then we will say, 'We will stand out,' and I do not think there is any difficulty about it.

Mr. LAW: That would mean standing out of the Berne Convention as well as the Berlin Convention.

The PRESIDENT: I do not think there is much difficulty about that.

Mr. FISHER: The Convention of Berne has just the same substantial feature in it. I am taking it for granted in this regard, that we stand out of the Berne Convention as well as the Berlin Convention.

The PRESIDENT: There is our weak spot—that we are parties and Canada is a party to the Berne Convention.

Mr. FISHER: Yes, and I must remind you—you have a full record in your Department—that that is one of the chief reasons why Canada has been asking pretty insistently for some time back to be relieved from her adherence to the Berne Convention.

There is just one point more I want to ask; I think I know what it means, but supposing you, on behalf of His Majesty, were to reserve that Article 6, would that in any way militate against or prevent your having a private arrangement for yourselves with the United States if you found it necessary in the interests of your authors? I do not think it would.

Sir H. LLEWELLYN SMITH: I do not think it would prevent it at all.

Mr. FISHER: I do not think it would, and therefore you would be in a position to urge that change in the general Convention, and still if you chose to make such an arrangement as you now have with America.

The PRESIDENT: If we pass this Resolution it would not necessarily follow, I take it, that the Government would have to denounce our present arrangement with America.

Mr. FISHER: I do not think so.

The PRESIDENT: This is only as regards any additional obligation thrown upon us—that we should not take it.

Mr. FISHER: I think you would still be free to make any addition you chose. I understand the Berlin Convention to imply an arrangement on certain points, but not precluding special arrangements between countries who are parties to the Convention.

The PRESIDENT: I do not think if we passed this it would necessarily create an acute question or a Copyright war; it would depend a little on how the Americans took it. But you see they are in a position if they chose to-morrow to denounce our Agreement with them, and we have more to lose from the author's point of view, not from the general public point of view, than to gain by the denunciation by the Americans of the Copyright Agreement. That is what would frighten our authors and that is where I fear my difficulty would be.

Mr. FISHER: I do not wish to appear to be giving any advice to the authors of England, but I would like to point out that the situation as between America and Great Britain to-day is quite different from what it was at the time that arrangement was entered into.



The PRESIDENT: Even now I take it you would find if you took British authors and American authors and put the interest of the public altogether out of sight, on the whole they would lose more than they would be benefited, as compared to what it was previously, if the whole arrangement was denounced and piracy went on as before prior to 1891. Many of our authors, at all events, would lose, and those are the ones I am afraid of. I think there are two alternatives about this particular point; one is that one of you gentlemen there should move this as a Resolution to which we might agree, and that we should have it on record, and that later on (we need not print these Resolutions until some weeks to come, at all events until you have completed them) we should be in a better position to judge whether it should appear. Another, short of that, is that it should be understood, or, I would say from here that I would consider the matter with the Secretary of State for Foreign Affairs, to see how far it would be expedient that the Convention should be ratified subject to this reservation. That I will do in any case, and there can be no harm in that appearing. As to how far it may be expedient for the Resolution, as a Resolution, to appear, I do not think, after what Mr. Law has said, there should be much difficulty about that.

Mr. FISHER: I would much prefer to have the other Resolution to this one.

Sir H. LLEWELLYN SMITH: I would suggest, if the Conference is prepared to consider and pass anything in this wider form, it would be better to reach it by striking out of what I may call the Canadian Resolution the words "as regards any self-governing Dominion which so desires," and afterwards the words "on that Dominion."

The PRESIDENT: Mr. Fisher, may I read you this? I have, as it were, put it into two parts, and I think this covers rather what you have been discussing: "That the President" (that is myself as President of this Conference) "be requested" "to represent to the Secretary of State for Foreign Affairs that it should be made" "clear on ratification that the obligations imposed by the Convention on the British" "Empire should relate solely to works the authors of which are subjects or citizens" "of a country of the Union or *bonâ fide* resident therein" (or supposing he does not see his way to do this), "and that in any case it is essential that the above reservation" "should be made in regard to any self-governing Dominion." That is to say, if he found for the reasons I have given that it was inexpedient to raise the general question, at all events it is essential to do it in regard to the self-governing Dominions. How does that strike you?

Sir RICHARD SOLOMON: "In the case of a self-governing Dominion desiring it."

The PRESIDENT: Yes—"which so desires."

Mr. FISHER: Might I make another slight suggestion—I do not know if it could be worked out? I would like to accept Article 6, but in the form in which it is I should find that impossible. Could we not modify Article 6 slightly, and then accept it? Article 6 reads at the present moment, "Authors not being subjects or citizens of" "one of the countries of the Union, who first publish their works in one of those" "countries, shall enjoy in that country the same rights as native authors, and in the" "other countries of the Union the rights granted by the present Convention." Could we not just change that by saying, "Authors not being subjects or citizens of one of" "the countries of the Union but who are *bonâ fide* residents in such country." That cuts out—

The PRESIDENT: You mean we should suggest that modification in the Article.

Mr. FISHER: Yes.

The PRESIDENT: Subject to correction, I take it as regards the Convention that all the delegates have met, and they have passed certain words. I do not think we can modify the words of the Convention, because that would mean the meeting of the

Conference. I think we can reserve, subject to their assent, Article 6, but I doubt if we can begin altering the words; is not that so, Mr. Askwith?

Mr. ASKWITH: I am afraid that is so.

The PRESIDENT: The Conference has met and dispersed, but we could reserve. Does not that come to the same thing?

Mr. FISHER: Could not we reserve it by saying that the Article modified in this manner would be accepted or agreed to?

The PRESIDENT: The modification of the Article is the destruction of the Article; it is either that the non-unionists can come in or they cannot.

Mr. FISHER: I wanted to point out that we would allow non-unionists to come in provided they were *bonâ fide* residents in a Union country.

The PRESIDENT: That is what we were suggesting.

Mr. FISHER: That is what we agreed to.

The PRESIDENT: I think if we can agree on the substance of it, the actual method of carrying it out had better be left to the Foreign Office, as it is a diplomatic question. If these words are sufficient for your purpose, I think we might leave to the Foreign Office the best method of carrying it out. The suggestion in my words is that we should urge on the Foreign Office that we think as a Conference it is very important that Article 6 should not apply to Great Britain and the Dominions as a whole, but if the Foreign Secretary saw difficulties, for the reasons I have given, in regard to that matter, at all events it is essential in ratification, that we should reserve the particular case—such Dominions as desired it, and in particular Canada.

Mr. FISHER: Would it not be well to say that Article 6 should only apply to the British Empire in the case of authors who are *bonâ fide* residents of Union countries? That would, perhaps, be a lesser change than to say that the whole Article shall not apply.

The PRESIDENT: Would you mind repeating that, as I do not quite see the difference at the moment.

Mr. FISHER: That Article 6 shall not apply to the British Empire except in the case of authors who are *bonâ fide* residents of Union countries.

The PRESIDENT: Yes, I think that would be better.

Mr. FISHER: That is a lesser limitation. The one as read by the President is that Article 6 shall not apply at all, as I understood it.

Mr. LAW: Authors only who are *bonâ fide* residents of Union countries.

The PRESIDENT: I did not mention Article 6 in terms, it is only "that it" "should be made clear on ratification that the obligations imposed by the Convention" "on the British Empire should relate solely to works the authors of which are subjects" "or citizens of a country of the Union or *bonâ fide* resident therein." I think in yours Article 6 was mentioned.

Mr. FISHER: I think that is better.

The PRESIDENT: I will have that copied and we will revert to it again. We can go on with the other points in the meantime.



The next point is the architecture Article. I will read it. The object I may say of this Article, Mr. Hall Jones, was that there was a general expression of feeling against protecting buildings as such, for practical and other reasons. At the same time it was felt that it was not unfair that, so far as there was artistic merit and real originality in a building and works of art, they should be protected. And also this was intended to exclude the industrial designs question, which is on a different footing: "The Conference is of opinion that an original work of art should not lose the protection of artistic copyright solely because it consists of or is embodied in a work of architecture or craftsmanship, but that it should be clearly understood, that such protection is confined to its artistic form and does not extend to the processes or methods of production, or to an industrial design capable of registration under the law relating to designs and destined to be multiplied by way of manufacture or trade." How does that strike you, Lord Tennyson?

LORD TENNYSON: I think it is very good.

The PRESIDENT: Sir Richard?

Sir RICHARD SOLOMON: Yes.

Mr. FISHER: It seems to be quite satisfactory.

Mr. HALL JONES: Have you dealt with the question of registration?

The PRESIDENT: Yes. We dealt with the question of formalities, and I think the general conclusion come to by the Conference was this: that generally they agreed in the view expressed by the Convention at Berlin that, as far as possible, formalities should be abolished, but that it is quite necessary under certain circumstances and under certain conditions that there should be certain formalities, either date or whatever it may be, and that that must be left more or less to Great Britain with its Dominions to settle, and that is one of the points we are now drafting as far as we can.

Mr. HALL JONES: It bears upon this, does it not?

The PRESIDENT: It does bear upon it; we are drafting the heads of the Bill which we propose to circulate and discuss at a later stage. Is that agreed? [*Agreed.*]

Then I think the third point—the only point left for further consideration—in fact that was not left for consideration but it was to be raised again—was the question of the number of years; and the position as far as I am concerned that I put to the Conference, and I will repeat to Mr. Hall Jones, is, that I am not able at the present moment to give a definite opinion with regard to it, as it is a question I have not yet had the opportunity (or, indeed, on any of these questions yet) of consulting my colleagues upon. Clearly it must be put to them, and I have not, indeed, myself come to a final conclusion with regard to it. There were two suggestions made or rather three. I think we were all agreed on life—that it should date from life for various reasons; but I am bound to say that I have read Macaulay's speech in 1841, and if somebody repeats that speech I shall find some points in it rather difficult to answer. However, on the whole I think life is desirable. One has authorities, at all events, in that direction.

Then the question is what the extra period should be; 30, 40, and 50 years have all been suggested, and without giving an opinion in reference to the period, there are two points which have struck me—on thinking it over since our last meeting and before—on which I should rather like to know what view the Conference take, or what arguments they would be prepared to supply me with. This first point is this, and it is the one you raised this minute incidentally: how far, supposing the period of the copyright is materially extended, you could prevent practically the extinction or the prohibition of a book, or, at all events, provide for its publication either in any form at all or in a cheap form—what obligation if you give the extended term, you could lay on the author or the publisher, of producing that book—necessarily producing it, and also producing it in something of the nature of a popular form. We have been considering, but we have not had much time to consider, the wording of this point. But I think it is quite clear that to facilitate the passage of

the Bill, and, indeed, also from the point of view of equity, some clause ought to be inserted enabling some authority (the Board of Trade, I suppose) to intervene in the case of a book which is obviously kept out of circulation, either because it is not reprinted or because it is published at a very excessive price. It is not an easy clause to draw, but I think some clause of that sort would have to be drawn. You were going to raise that point. Lord Tennyson; would you let us know what you think of it?

LORD TENNYSON: That would be a perfectly just clause if you can ensure life and fifty years, provided that the author's works are published at a reasonable price.

I should like to answer a question you put last time, if I may. You asked me the kind of books which have fallen into the public domain of which it would have been profitable to the families of the authors to have the copyright to last for life and 50 years. I have got a list here from Macmillan, which is a considerable list, and I might just mention one or two of the authors in whose cases if their books had not fallen into the public domain the copyright would have been very valuable to the families of these authors. There are F. D. Maurice's works, there are Kingsley's works, like "The Water Babies," "Alton Locke," "Heroes," and "Westward Ho!"; there are Tom Hughes's works such as—"Tom Brown's School Days"; then Miss Yonge's "Daisy Chain" and "Heir of Redclyffe" and others. Then there are Archbishop Trench's books, which are valuable.

The PRESIDENT: When was Kingsley's last book published?

LORD TENNYSON: That I cannot tell you. Then there are Matthew Arnold's books. I had better hand this list over to you because it is rather an interesting one. There are Mrs. Henry Wood's works, and her family are in distress because they have not got the copyright. I was just giving you the instance, Sir, of Mrs. Henry Wood's novels, which have a large sale. There is another point, that of annotations of the classics. I may point out, as in the case of my father's early poems, that incorrect and incomplete editions of these annotated classics are sold broadcast under the present Copyright Law, instead of the later and more perfect editions; for instance, in the case of Sir Richard Jebb's "Sophocles," notes are now published which he deleted and altered, and which he would have been horrified to see printed now.

The PRESIDENT: That, of course, is an argument for a period after life.

LORD TENNYSON: I thought you would like to know it.

The PRESIDENT: That is very good; I think it is a very strong argument. I think I mentioned to you before—it occurred to me that it might be a good thing if I could privately or semi-private obtain such information from some of the publishers, and I actually drafted a letter, but I have not yet sent it.

LORD TENNYSON: I will hand this list over to you.

The PRESIDENT: Which I think covers the same point. I was going to ask Macmillan and Longman and Murray and Smith Elder, representing probably those houses which publish the longer lived works, for this information, but this list which you have given me will be very useful. I understand from what you say, Lord Tennyson, that you agree that some clause—and I would like you, Mr. Fisher, to give me your opinion also on this point—should be drawn which would give public protection against anything in the nature either of the withdrawal of a book from the public or publication at such an excessive price that there would be no popular edition of it. I think it is quite clear that if we are to give the additional period, something like that protection of the public would have to be introduced. What do you think, Mr. Fisher—do you think that is reasonable?

Mr. FISHER: I doubt very much whether it would be much availed of, but I think it would help you very much to pass the Bill through Parliament.

The PRESIDENT: Honestly, that is my view.



LORD TENNYSON: I have asked representatives of authors and publishers and they seem to think that it would be perfectly feasible and practicable.

Sir H. LLEWELLYN SMITH: We have been consulting about a clause for the purpose this morning.

The PRESIDENT: There has been a discussion at the Board of Trade, and this point has been considered, and I would like to ask what Sir Hubert has to say on this point.

Sir H. LLEWELLYN SMITH: The provisional conclusion we arrived at this morning as to the clause to be put into the draft Bill to be put before this Conference was something of this kind—that at any time after the death of the author anyone should be able to apply to the proper authority (I will say what the proper authority should be afterwards) alleging that the reasonable requirements of the public are not being met by reason, either of the fact that the book is withheld or that it is published on unreasonable terms; and that the authority should have power to make such order as they thought just, both as regards the terms of payment to the owner of the copyright and the price of publication, and so forth. Our idea is for the moment that the authority should be the Controller of Patents, Trade Marks, and Designs, with an appeal to the Court, exactly like the machinery for the revocation of a patent.

Mr. FISHER: We have a clause very like that in our Copyright Act, which I might read or draw your attention to; it is clause 23 of the Canadian Copyright Act.

Mr. TEMPLE FRANKS: What date—1875?

Mr. FISHER: Revised Statute LXII.; 1875 is the date; and this is the clause: "If any work copyrighted in Canada becomes out of print, a complaint may be lodged with the Minister, who, on the fact being ascertained to his satisfaction, shall notify the owner of the copyright of the complaint and of the fact, and if within a reasonable time no remedy is applied by such owner, the Minister may grant a licence to any person to publish a new edition or to import the work, specifying the number of copies and the royalty to be paid on each to the owner of the copyright." It covers a good deal of the same ground, but the remedy is a little different.

Mr. TEMPLE FRANKS: The same provision is included in your 1889 Bill.

Mr. FISHER: Yes.

Sir H. LLEWELLYN SMITH: If there is a single book on the market that provision would be defeated; that only applies if the book is out of print; and we think it ought to apply if it is not available to the public on reasonable terms.

Mr. FISHER: I quite agree with that point of view.

Sir THOMAS RALEIGH: Are there any cases decided upon that, Mr. Fisher?

Mr. FISHER: There have been no cases in Court, Mr. Ritchie tells me, but it has been made use of.

The PRESIDENT: On that point I understand the Conference to agree that if we make any alteration in the term of copyright which would extend the term, clauses to that effect to prevent books from being kept out of the market and to insist that editions at a popular price should be published should be drawn, and this, of course, would be among the clauses we will circulate to you.

Mr. FISHER: Might I ask a question: would a clause of that kind be in any way in conflict with the International Convention? I would not think so.

Mr. LIDDELL: No.

The PRESIDENT: I do not think so. I imagine many of them have themselves provisions of the same kind.

Sir H. LLEWELLYN SMITH: We have the same principle, although it is in an unworkable form, in our existing law. If a book is not published at all we can petition the King in Council.

Mr. TEMPLE FRANKS: It is the principle which underlies all the monopoly rights given by legislation at the moment, patents, railways, and so on. By that legislation you can regulate the price and the supply, and it can be defended on that ground.

The PRESIDENT: That I think is comparatively simple.

The other point is the more difficult one, and I should like to know what the Conference think about it. Again, this is a point Macaulay made very strongly. As far as the author is concerned, in a very large number of cases it is perfectly useless to him, it is no advantage to him to have the term extended. The whole point and basis of copyright is that you want to encourage literature and you give the author the extra years, assuming you do, because you want the man or the woman to have the opportunity of making a sufficient livelihood and a sufficient profit from their books as an encouragement to write. You therefore add to the limit a number of years. But in a very large number of cases in Macaulay's time—possibly the majority of cases (the system has altered a good deal lately)—the author or authoress parted with his or her copyright, and therefore you were not advantaging literature at all. The publisher cannot say, the author cannot say—nobody can say—that a book is likely to live 50, 60, 70, or 80 years, and a publisher will not give sixpence more for the copyright of a book which has another 15 or 20 years more to run than under the old system of copyright; that is to say, he will give just as much for the 42 years or seven years after death as for the life and 50 years; so that the author does not benefit, and the sole person who benefits is the publisher if the author sells his copyright. We know what people think of publishers, and after all there is no reason why the publisher should gain. There are one or two points Macaulay mentioned in talking about Milton's daughter in the speech—that Milton's daughter would not have benefited sixpence by any extension of copyright; indeed at that time copyright was perpetual. Milton sold the copyright of "Paradise Lost," and so on, and therefore she would not have benefited. You, Lord Tennyson, mentioned a case just now which is germane, that is, the case of Mrs. Henry Wood, who, I believe, parted with her copyright, and as far as her family therefore are concerned—all the little Woods—they would not have benefited in the least from the extension. I am bound to say that on thinking it over I find it a little difficult to appreciate in my mind what is the actual answer to that. I believe the answer to be that in these days it has become far less customary—indeed the custom is almost entirely on the other side—for authors to part with their copyright; as a rule they keep it; and if you extended the copyright it would be an inducement to the author to keep his copyright. The Americans meet it in this way—that under their law they have 28 years, and at the end of 28 years if the author, or the widow and children, or heir-at-law, or the executors, or whoever it may be representing the family, apply for a further term, they can get another 28 years; but that is only given to those who represent the family. I do not think that is feasible as a matter of practical politics in this case. Further, though the author might apply himself, the publisher might still get the benefit from it. On the other point, I think it might be held that in giving this extension of time the result would be to give a somewhat longer time to the more mature works only—that the early works would perish as being more immature, and, therefore, not likely to last the period, and that the author is more likely to part with his copyright for his early works than for his later works. I find it a little difficult to know what the answer to this point is, because you may not in many cases benefit the author, inasmuch as he will not get more for his works by the addition of a few years more or less.

LORD TENNYSON: It is perfectly true as you say, that authors do not now as a rule part with their copyrights.



Mr. LAW: I put that question several times to witnesses, and the answer always was that the system had been completely changed, and that authors worked by royalty.

LORD TENNYSON: It has quite changed.

The PRESIDENT: And, in fact, as I understood just now, the inducement to do that would be very much accelerated by the fact that they would get a longer time, which might be of use to them later.

Mr. TEMPLE FRANKS: Would it be quite impracticable to introduce the American system which you mentioned?

The PRESIDENT: I have considered that, and I do not see how it could be adopted.

Mr. TEMPLE FRANKS: It is a system which prevails for the prolongation of patents.

The PRESIDENT: A period greater than life.

Mr. TEMPLE FRANKS: The same issues are raised, "Have you been sufficiently remunerated?" "Who is really benefiting?" and it is only where the original patentee somehow benefits, and not where he has assignees or purchasers who are benefiting, that the prolongation is allowed.

The PRESIDENT: Could you go into each case? I considered that carefully, and I have read what the committee have recommended—they are dead against it.

Mr. TEMPLE FRANKS: It is done in the case of patents, but the difficulty would be that after a long extended period it might be more difficult to show accounts. They have to file accounts in the case of patents.

The PRESIDENT: In thinking it over it occurred to me that what you must do in that case is this: take life, on which everybody is agreed, and then say that for 25 years and the life, or say 20 years, it should go on as now, and at the end of 20 years the author or his people have to prove their rights, and assuming that 50 years is the *z*, then he will get another 30 years. But that very much reduces in the bulk of cases the existing copyright, with which they have no trouble, and which they can sell at once. If you do not reduce the present copyright you really do not get much by it, if you leave a sufficient number of years afterwards. That is the practical difficulty. You see my point?

Mr. FISHER: Yes.

The PRESIDENT: You are putting the author, *quâ* author or *quâ* publisher, in a worse position than before, and I confess that although it rather smiled upon me at first, since I have looked at it and worked it out, I do not think it is practicable.

Mr. TEMPLE FRANKS: There might be very great difficulties as regards the actual author.

The PRESIDENT: I think people would think it was difficult to prove.

Sir H. LLEWELLYN SMITH: The proposal of the Convention is to give an extended term for existing works to the author in spite of the fact that he has disposed of his copyright.

The PRESIDENT: The author or his heirs-at-law.

LORD TENNYSON: But supposing you have your 50 years' copyright, do you mean that the remaining eight years, after the present 42 years' copyright is run out, go to the author?

Sir H. LLEWELLYN SMITH: That is as I read the Convention.

Mr. LIDDELL: It is not the Convention; it is the Committee.

Sir H. LLEWELLYN SMITH: Yes, it is the Committee's recommendation on the Convention. The Convention left it open.

The PRESIDENT: I should rather like to know and I wonder—here is Macmillan's list for example—whether the publishers would tell me which of these were theirs.

LORD TENNYSON: Yes, I am sure they would; but Macmillans put it specially that it would benefit the authors' families as if the copyright were still with the authors' families.

The PRESIDENT: Do they say necessarily?

LORD TENNYSON: Yes, they put it at the top.

The PRESIDENT: Although it is no reflection upon them, I do not think it necessarily follows.

LORD TENNYSON: It may be very easily ascertained.

Mr. TEMPLE FRANKS: Do we not really want to know the proportion of works that would actually survive?

The PRESIDENT: That is what I am asking.

Mr. TEMPLE FRANKS: That is quite apart from the question of who would benefit by it.

The PRESIDENT: Mr. Hall Jones, do you want to say anything on the question of period?

Mr. HALL JONES: Personally, I am satisfied with the present period in this country, but I recognise that the majority are in favour of extension, and I believe the extension will have to come; but I would like to see the extension limited as much as possible.

LORD TENNYSON: Do you not think putting in "provided the works are published at a reasonable price" would meet the difficulty?

Mr. HALL JONES: It is so open to argue what is a reasonable price; who is to take action?

Sir H. LLEWELLYN SMITH: The rival publisher might take action.

Mr. HALL JONES: Yes, it might be open to anyone. You would not say the Public Prosecutor?

Sir H. LLEWELLYN SMITH: No.

Mr. TEMPLE FRANKS: Anyone interested might apply.

Mr. HALL JONES: Everyone's business is no one's business.

The PRESIDENT: That is again on record. I have asked other members; I do not express any views of my own, because I am not really in a position to do so.

I do not know if there is any other minor point in reference to it; we discussed all these points last time and various others—about half a dozen others—and we either came to the conclusion with regard to them that we would



accept the Convention or we said we would accept it with certain reservations and alterations, which will appear in the heads of the Bill which we propose to circulate. Perhaps it would be better to re-discuss them when we see them in a practical form rather than do it again now.

Mr. HALL JONES: Certainly.

The PRESIDENT: I do not know whether there is any other point (I am coming back to Article 6 in a moment) with regard to the Convention which we have to discuss to-day.

Might I just say as regards procedure that the only other business so far as I am aware, when we have decided what we have to do to-day, is to consider and circulate as soon as we can the heads of the Bill? As the House meets on the 13th, may we fix Tuesday the 14th at 11.30 for the next meeting of the Conference? [*Agreed.*] By then we shall have circulated in time for your consideration the heads of the Bill, and we shall also have printed for your information these resolutions which we have passed now and the one about buildings, and this one if we can agree to it now. This is Sir Hubert's suggestion about security against the abuse of the extension of copyright: "That if the period of copyright of a published work is extended to life and 50 years, it is desirable that effective provision should be made to secure that during the latter part of the copyright period the reasonable requirements of the public are met as regards the supply and terms of publication of the work." Perhaps you would like to move that now, Lord Tennyson. I might just add that I think we must put it, "if the period for a copyright work is extended" we are not proposing to commit ourselves.

LORD TENNYSON: I suppose it is quite clear that "the latter part of the copyright period" means the 50 years.

Sir H. LLEWELLYN SMITH: It could not be before the death of the author.

The PRESIDENT: I think perhaps we might as well commit ourselves to life here "if a published work is extended."

LORD TENNYSON: You might put in "the copyright period after life."

The PRESIDENT: Yes, "the copyright period after life," "that if the period of copyright of a published work is extended it would be desirable that after the death of the author," it will run as a whole, "that if the period of copyright of a published work is extended it is desirable that effective provision should be made to secure that after the death of the author, the reasonable requirements of the public be met as regards the supply and terms of publication of the work." Would you move that, Lord Tennyson?

LORD TENNYSON: Yes, I move that.

The PRESIDENT: Does anyone second that?

Mr. FISHER: I second that.

The PRESIDENT: That is carried. That is on record.

Mr. FISHER: May I just refer to one matter—I think it is a matter of form—in connection with the adhesion to the Convention; should there not be a right of separate denunciation provided for? We have provided for separate adhesion to the Convention on the part of the different self-governing Dominions. I think there ought also to be a provision for separate denunciation in case at any time that is desired on the part of a self-governing Dominion.

Sir H. LLEWELLYN SMITH: It is in the Berne Convention.

Mr. FISHER: It is in the Berne Convention, but it is not in our resolution in regard to this. We have provided by resolution for the separate adherence, but not for the separate denunciation. I mean in our resolution—I do not mean in the Convention or in the Act.

Mr. ASKWITH: It is not in the Convention.

Sir H. LLEWELLYN SMITH: Is it not?

Mr. ASKWITH: Not a separate denunciation by a Colony, but you can see in this letter from the International Bureau they say that they consider it is implied in the Convention.

Mr. FISHER: I only thought of perhaps having a resolution.

Mr. ASKWITH: There is no harm in doing that to make it perfectly plain.

Mr. FISHER: Number 4 provides distinctly that no ratification shall be made on behalf of a self-governing Dominion until its assent to ratification has been received. I would suggest also that denunciation shall be made at the request of a self-governing Dominion or on notification.

Sir H. LLEWELLYN SMITH: That any self-governing Dominion should have the right of giving notification of denunciation. Internationally it is quite clear they could; there is not the least doubt as to the constitutional position, that it is so under the convention of Berne at present.

Mr. FISHER: It is so, but it has not been carried out.

Sir H. LLEWELLYN SMITH: I mean that internationally it is so. The question as to what has been done is another thing.

Mr. FISHER: All I thought was that as we were providing a resolution here which distinctly states that the ratification shall only take place on behalf of the Government after assent, the denunciation should also be clearly defined.

Mr. ASKWITH: The question asked of the Bureau was the following:—"Would it be open to a State at a date subsequent to the ratification of the revised Convention to withdraw in respect of one or more Colonies a reservation previously made, notwithstanding that such reservation might not be withdrawn, or might not have been made originally in respect of the State itself?"

Mr. FISHER: That is on the reservation point.

Mr. ASKWITH: Yes, that goes further than the main question.

Mr. FISHER: You understand what I mean?

Sir H. LLEWELLYN SMITH: Perfectly.

Mr. LAW: Yes, it is a separate accession and a separate withdrawal.

Sir H. LLEWELLYN SMITH: I think we can easily draft something of this kind: "Provided that no ratification shall be made on behalf of a self-governing Dominion until its consent to ratification has been received, and that it should be open to them to notify their desire to retire from the Convention"—we will get the words.

Mr. FISHER: It is easy enough to word it out.



Mr. LAW: It would be desirable to give the various parts of the British Empire a longer time than the parties to the Union to consider the question of the withdrawal of any particular part; so as to give a preference within the Empire in respect of notice of withdrawal between the different parts of the Empire.

Mr. FISHER: Could that be embodied in the Imperial Act in such a way as to apply to the Empire without reference to the Convention? I do not know.

Mr. LAW: It might be put into the Act.

The PRESIDENT: You might put it into a Head and we will discuss it.

Mr. FISHER: I think that would be advisable—the idea that it should be in the Act—but not in the adherence to the Convention.

The PRESIDENT: In circulating the printed Resolution, to which we have agreed, I will put these words which have been suggested—I think I have not put them formally—“And a provision shall be made for separate withdrawal of each self-governing Dominion.”

Mr. FISHER: That embodies exactly what I was thinking of.

The PRESIDENT: Now we come back to Article 6, and I will read this—I think you have all got a copy of it: “That the President be requested to represent to the Secretary of State for Foreign Affairs that it should be made clear on ratification that the obligations imposed by the Convention on the British Empire should relate solely to works the authors of which are subjects or citizens of a country of the Union or *bonâ fide* resident therein; and that in any case it is essential that the above reservation should be made on behalf of any self-governing Dominion if it so desires.” Does that on the whole cover your position, Mr. Fisher?

Mr. FISHER: Yes. I think quite. That is as far as the International Convention is concerned.

The PRESIDENT: I am speaking of that. I do not know that to-day we have any more business.

Mr. FISHER: If you are passing to another subject might I just say a word with regard to that. This covers the point entirely as far as the International Convention is concerned, but, of course, it is only a recommendation to the Imperial authorities for their own action under their own Bill. Now, if the Imperial Bill does not provide for something of that kind, it would make a very great difference to us in regard to the adoption of the Bill.

Sir H. LLEWELLYN SMITH: As this is drawn, Mr. Fisher, it is with reference to the Convention.

Mr. FISHER: I wished to bring out this other subject because, if it was allowed to pass without notice, it might be taken as a subject not to be considered in the framing of the Bill.

The PRESIDENT: I think, if I may say so, we had it very much in our mind, it is possible that we shall deal with it in the Bill.

Mr. FISHER: You see there are two relationships of the self-governing Dominions. One is as to the Imperial Bill and the other is as to the International Convention. This seems to me to cover entirely the relationship of the Dominions to the International Convention, but still, if notwithstanding this, the Imperial Bill were still to grant Imperial copyright in Great Britain to a country outside the Union, it would present a condition of affairs which we would have to consider very carefully indeed before adopting the Imperial Bill.

Sir H. LLEWELLYN SMITH: Before adopting it without reservation?

Mr. FISHER: Before adopting it at all?

Mr. TEMPLE FRANKS: Because an injury would be done in the interim.

Mr. FISHER: Not so much about the interim, because if the Imperial Bill is to give copyright in Great Britain to foreigners, then our relationship to the Imperial Bill will have to be considered in light of that.

The PRESIDENT: I think we are fully alive to that.

Mr. FISHER: We are very anxious too that the Imperial Bill shall not contain that provision, because, if it did, it would render it very difficult indeed, if not quite impossible, for us to adopt the Imperial Bill—I am afraid at the present moment I would have to say impossible.

The PRESIDENT: We will do our best. I quite appreciate your point and I think we really had it in mind before. We are extremely anxious that Canada should adopt the Bill.

Mr. FISHER: I did not wish it to pass without reference—that is all.

The PRESIDENT: The only other point I was to raise was this, I think for the information of the Conference I had better say that I see very little likelihood this session of getting this Bill through, because the whole of the Parliamentary position has been entirely altered by the death of the King, and I do not think anybody would wish to have more legislation this year than they can help, and, therefore, even if we could agree, and the Bill could be drawn, and so on, I do not think there is much chance of passing it this year. Of course I will watch the position and see what I can do.

The other point which I just mention to you, although I shall really have to decide it myself, would be the question whether under those circumstances it would be more expedient to introduce the Bill, without any chance of its passing or even getting a second reading, for information for next year, or whether it would be better not to. There is the advantage in introducing a Bill that people get to know about it and to talk about it, and, possibly, to make suggestions which are of value. On the other hand, there is sometimes great disadvantage when they light on a particular point, and there is criticism of that, and experts get on to it. But I think it is a question which must be left, if you will allow me, to my discretion. It is a parliamentary position, as to which it is very difficult from day to day to judge. I just mention both those points so that you may understand the parliamentary position with regard to them. I do not think we have anything more to do to-day.

Sir H. LLEWELLYN SMITH: Do I understand, Mr. President, that in the interval between now and June 14th we are to get on as fast as we can with the drafting, so as to get a document which could be considered, and when we find anything which has not been decided by the Conference we are to decide it as we please, so as to get a basis for discussion?

Sir RICHARD SOLOMON: Quite.

Sir H. LLEWELLYN SMITH: Because a great many points have arisen already on drafting.

The PRESIDENT: I understand all that would be for our next meeting. There is no matter of principle.

Mr. FISHER: The next meeting on the 14th June will be a continuance of this Conference.



The PRESIDENT: Yes.

Sir H. LLEWELLYN SMITH: You shall have a draft beforehand.

The PRESIDENT: You will have something.

Mr. HALL JONES: A draft of the Bill, I understand.

Sir H. LLEWELLYN SMITH: Yes, but it will be crude.

The PRESIDENT: Would you like, Lord Tennyson, the Bill as drafted or would you prefer the heads? I am inclined to think the best for our purpose would be to have heads rather than clauses.

Mr. HALL JONES: If you can manage the Bill, it will be better.

The PRESIDENT: It is much more difficult often to follow a Bill. What we really want to settle are the actual things.

Mr. HALL JONES: Then we would have to go through it again in the Bill form.

The PRESIDENT: Do you think you would?

Mr. HALL JONES: I think so. We would require to see it in Bill form in any case even though we had headings.

Mr. FISHER: I am not very familiar with your forms of Bills, and it strikes me that it is possible that we would find it a little difficult in Canada to adopt the whole of the Bill in its exact wording. We have our own draftsmen who draft our statutes in accordance with general principles.

The PRESIDENT: As lucidly as ours?

Mr. FISHER: I am not prepared to say, and while, of course, the Bill adopted there would embody exactly the provisions of the Imperial Act, it might have to be in a little different form. I suppose that we would be understood to be free in that respect.

The PRESIDENT: Certainly.

Mr. FISHER: As long as it embodies the points at issue.

The PRESIDENT: Mr. Hall Jones, we will see if we can get the Bill out.

Sir H. LLEWELLYN SMITH: I think at the next meeting it will probably be an amalgam of both; a good many of the clauses will be in the shape of draft clauses, others will be in square brackets and simply heads; we will do the best we can. We are to decide all the outstanding points at our discretion. We must do our best because there are a lot of outstanding points.

The PRESIDENT: Yes.

Adjourned to Tuesday 14th June at 11.30 o'clock.

## FOURTH DAY.

Tuesday, 14th June 1910.

PRESENT:

The Right Hon. SYDNEY BUXTON, M.P. (*President of the Board of Trade*),  
President.

Sir H. LLEWELLYN SMITH, K.C.B. }  
G. R. ASKWITH, Esq., C.B., K.C. } (*Representing the Board of Trade*).  
W. TEMPLE FRANKS, Esq. }  
H. W. JUST, Esq., C.B., C.M.G. (*Secretary to the Imperial Conference,*  
*representing the Colonial Office*).  
A. LAW, Esq., C.B. (*representing the Foreign Office*).  
F. F. LIDDELL, Esq. (*of the Parliamentary Counsel's Office*).

The Hon. SYDNEY FISHER, accompanied by P. E. RITCHIE, Esq. (*representing the Dominion of Canada*).

The Right Hon. LORD TENNYSON, G.C.M.G. (*representing the Commonwealth of Australia*).

The Hon. W. HALL JONES (*representing the Dominion of New Zealand*).

The Hon. Sir RICHARD SOLOMON, K.C.B., K.C.M.G., K.C.V.O., K.C. (*representing the Union of South Africa*).

Sir THOMAS RALEIGH, K.C.S.I. (*representing the India Office*).

A. B. KEITH, Esq. (*of the Colonial Office*) and } *Joint Secretaries*.  
T. W. PHILLIPS, Esq. (*of the Board of Trade*) }

The PRESIDENT: I do not know what the Conference would like in the way of procedure. We have drafted a Bill, and submitted it to the members of the Conference with a copy of the memorandum as I promised, pointing out which of the clauses were new and the general drift of them. The first idea was that we might take the Bill clause by clause and deal with it; but, perhaps, if it meets with the approval of the Conference, it would be better to begin first with the clauses on page 14, from No. 27 onwards, which affect really what we have been chiefly discussing, namely, the resolutions of which we have approved; and, after all, those are the ones which are of greater interest to the Conference as a whole. What do you think of that proposal, Mr. Fisher?

Mr. FISHER: It would suit me very well.

Mr. LIDDELL: I should have thought it would be necessary to take clause 1 first, because clause 28 refers to it.

The PRESIDENT: Yes, I think we had better take clause 1 and then go to clause 27. I would like to know what the Conference would prefer in the way of procedure. Clause 1 is the general proposition as to what is copyright, and so on. The explanatory memorandum, which I think you have all got, shows the difference between the existing state of things and the proposed state of things. I do not know quite how you would like to take it, and whether you would like me to read out clause 1, subsection (1), and so on, and then stop when any member wants to raise a point. I have gone through it very carefully myself more than once with the draughtsman and my Board of Trade representatives. What do you think?

LORD TENNYSON: Would it not be shorter than reading it if you merely asked if anyone had any remark to make on clause 1?



The PRESIDENT: I did not mean to read it through, but I would say "clause 1, subsection 1," and ask for remarks.

Sir RICHARD SOLOMON: Are you going through all the clauses?

The PRESIDENT: I thought of taking clause 1 first, which governs the whole, and then go to the Colonial clauses, and then come back to the clauses subsequent to No. 1 and see what there is of importance. This is really a definition of what is copyright. Page 1, clause 1, subsection (1); has anyone any observation to make upon that?

Mr. FISHER: I think the definition of "resident" is provided for later on.

The PRESIDENT: Yes. Will you say anything on it you like, Mr. Liddell?

Mr. LIDDELL: A point has been raised by Mr. Cutler about a British subject. He seems to read the Bill to mean that you will have in and out copyright according as the author is for the time being a British subject. Of course, that is not what is meant.

Sir H. LLEWELLYN SMITH: It is of course at the time the work was produced and we can make that clear.

Sir RICHARD SOLOMON: I think that expression "British subject" will raise some difficulties under our naturalization laws. Supposing a person is naturalized in any part of South Africa, according to the law of the country he would be a British subject, but he is only a British subject within the ambit of that law. Is he a British subject for all purposes, for instance is he a British subject here?

Mr. LIDDELL: I should think so.

The PRESIDENT: I should have thought in any part of the Empire.

Sir RICHARD SOLOMON: I have gone into the law of naturalization, and I think I am right in saying that a person naturalized according to the law of a particular colony is a British subject only within that colony. I have dealt with the matter over and over again.

The PRESIDENT: Unless he also conforms to the naturalization laws of the other colonies.

Sir RICHARD SOLOMON: I had a case in South Africa where a man was naturalized in Cape Colony, and he was a British subject in Cape Colony. He crossed the Orange River into the Orange River Colony and became a foreigner again and had to be naturalized by the laws of that Colony, where there is a different residential term. I do not know how you will deal with that, I am sure.

Sir H. LLEWELLYN SMITH: That is a very important point, but not a new point, because the existing Imperial copyright distinguishes between British subjects and other people, and therefore the case must have occurred, one should imagine.

Sir RICHARD SOLOMON: I think it should be clearly understood what a British subject is. If a person is naturalized in any British Dominion, he ought, for the purposes of this Act, to be considered a British subject throughout the whole of the Dominions.

Sir H. LLEWELLYN SMITH: It looks as if we ought to have a definition clause later to define what a British subject means.

The PRESIDENT: We should have a definition clause saying—as to which I gather we are all agreed—that a British subject anywhere, for the purposes of this Act, should be a British subject throughout.

Sir RICHARD SOLOMON: I mean that a man who is a naturalized British subject in any part of the British Dominions must, for the purposes of the Act, be considered a British subject throughout.

Mr. FISHER: I think you will find great difficulties about that.

The PRESIDENT: We shall find difficulties, but we will insert our definition clause.

Mr. FISHER: It is as well to insert it and see what you can do with it. I think it is right, myself; that is my own opinion.

Sir H. LLEWELLYN SMITH: It raises rather a big question.

Mr. FISHER: That question is to come up in the Imperial Conference.

Sir H. LLEWELLYN SMITH: We must look into that, but it is not a new difficulty, it must have existed—

Sir RICHARD SOLOMON: I may say that for the purposes of getting the Dominions to assent to this, I think they ought clearly to understand what a British subject is.

The PRESIDENT: Is there anything further on subsection (1)? Then subsection (2) of clause 1.

Sir H. LLEWELLYN SMITH: I should like to say that the exact wording of subsection (2) is subject to further consideration; I think there will be some verbal alterations not affecting principle.

Mr. LIDDELL: That is so.

The PRESIDENT: I thought I would take these separately. The first is (a) "in the case of a dramatic work to convert it into a novel or other non-dramatic work; (b) in the case of a novel or other non-dramatic work, to convert it into a dramatic work, either by way of multiplication of copies or by way of performance; (c) In the case of a literary, dramatic, or musical work, to make any record, perforated roll, or other contrivance by means of which the work may be mechanically performed." We are agreed that should come in. Then there is proviso (i).

Sir RICHARD SOLOMON: I think those words "for private use" should be transposed; they ought to come at the beginning.

Mr. LIDDELL: The words "for private use" qualify the making of an abridgment, translation, adaptation, transposition, &c.

The PRESIDENT: You mean that it should be "making for his private use"?

Mr. LIDDELL: Yes.



The PRESIDENT: Then (ii). I think this is a point we might just look at. If you look at the memorandum at the top of page 3, under the existing law it is not an infringement to reproduce a picture in statuary form, or to photograph a piece of sculpture. In future, if this subsection is agreed to, so far as the sculpture may be private, it will be an infringement of copyright, but where a piece of sculpture is in a public place, to photograph it will not be an infringement. That, I think, is quite right. The only point is, whether we ought to go quite so far as prohibiting any photograph or reproduction of it in a statuary form.

Sir H. LLEWELLYN SMITH: Our view has been that the photograph of a picture is an infringement, wherever it is. It is a reproduction from the flat into the flat and that is and must be always an infringement. It is at present and we keep it so. At present the photograph of a sculpture is in no circumstances an infringement. This would make it an infringement except as provided in the proviso "a work of sculpture which is in a public place or building."

Mr. TEMPLE FRANKS: It makes it an infringement by the addition of the words of subsection (2) "in any material form whatsoever."

The PRESIDENT: I think there is no doubt about the right to photograph a public piece of sculpture in a public place. The question is whether that is sufficient liberty. The proposal is an extension of the existing state of copyright.

Mr. FISHER: Would this cover the photograph of a building?

The PRESIDENT: Yes.

Sir H. LLEWELLYN SMITH: Or a work of architecture. I think there is an ambiguity there in the drafting, Mr. Liddell. It says "copyright in," but the "in" is ambiguous, it might be "situate in a work of architecture."

Mr. FISHER: I was not quite sure whether it did not refer to sculpture in a work of architecture.

The PRESIDENT: "Copyright in a work of sculpture or artistic craftsmanship, if situate in a public place or building or in a work of architecture." The next is lectures.

Sir H. LLEWELLYN SMITH: That is nothing new.

The PRESIDENT: Now we get to clause 2.

Sir H. LLEWELLYN SMITH: Were you not going to the Colonial clauses?

The PRESIDENT: If it suits you we will now go to clause 27. These are clauses drawn with a view to meeting the Resolutions and other matters. Now, I think, perhaps, we had better take them altogether, and Sir Hubert, who has taken some trouble over the drafting of them, had better explain them.

Sir H. LLEWELLYN SMITH: These clauses, 27 to 29, which go together, deal with three cases, the case of the self-governing Dominion which assents to this Act, the case of the self-governing Dominion which does not assent to this Act, or to which this Act does not extend, and the British Possession not being a self-governing Dominion.

Clause 27 is intended to carry out the Resolution of the Conference about the assent of the self-governing Dominion being required before this Act extends to it, and it is provided "that it shall not extend to a self-governing Dominion without the assent of that Dominion." Those were the words of the Resolution. The second subsection simply provides how that should be notified when the Dominion has assented. Then if I might skip clause 28 for a moment and go on—

Sir RICHARD SOLOMON: May I ask you a question before you go past clause 27?

The PRESIDENT: I think Sir Hubert had better explain the general drift of these clauses, and then we can go back to them.

Sir RICHARD SOLOMON: I was going to ask for an explanation of the word "assent" in clause 27.

The PRESIDENT: Would it not be better, if you do not mind, if we just explain what we have in our minds and then go back and see how far we have got it clear?

Sir H. LLEWELLYN SMITH: I took clause 29 before clause 28 because clause 29 applies to "the legislature of any British Possession to which this Part of this Act extends," so that, so far as the self-governing Dominions are concerned, it would apply to those which have assented. They "may modify or add to any" of the provisions of this Act in its application to the Possession, but, except so far "as such modifications and additions relate to procedure and remedies, they shall apply only to works the authors whereof are resident in the Possession, and to works first published in the Possession." What that means is that if a self-governing Dominion assents to the Act, that does not preclude it from passing an Act making modifications and additions with regard to procedure and remedies, because clearly the Act as it stands could not be adopted as a whole; the procedure and remedies may not be suitable, and it will not take away their power of passing local legislation which would apply to works the authors whereof are resident in the Dominion.

Then coming to clause 28: "The legislature of any self-governing Dominion" (whether it has assented to the Act or not) "may at any time repeal all or any of the enactments relating to copyright passed by Parliament (including this Act) so far as they are operative within that Dominion." I think that carries into effect another Resolution of this Conference.

The PRESIDENT: The third.

Sir H. LLEWELLYN SMITH: And the effect would be that if a Dominion assents to this Act they can pass legislation supplementary to it. That only applies to local copyright. They can pass legislation adapting the procedure and remedies to the circumstances of the Dominion. If they want to do more than that and pass legislation repugnant to it, they must proceed by repealing it. Then they are out of the Act and they become a Dominion to which this Act does not extend, and then they can do as they please. That is the situation.

Then subsection (2) of 28 provides (that is what I call the hiatus clause) for existing legislation continuing in force in a Dominion which does not assent to this Act until it is repealed. Of course in our Resolution we said "subject to treaty obligations." There is nothing about that put into this Act because that is assumed. The words "treaty obligations" do not occur here because it is assumed that nothing would be passed which is repugnant to treaty obligations.

Subsection (3), which is rather formidable in appearance, deals with what is the position of a Dominion which has not assented to this Act with respect to copyright in other parts of the British Empire; and it provides that by Order in Council the benefits of copyright according to this Act may be extended to such Dominion. But unless they are so extended by Order in Council then they shall not apply to any work the author whereof is resident in such a Dominion. The net effect of that is that supposing a Dominion does not assent to this Act, but passes legislation which gives copyright to British authors, then His Majesty by Order in Council can reciprocate. If they do not pass anything and give nothing they would get nothing; that is the net effect, Lord Tennyson, of that section.



LORD TENNYSON: Do you not think you might put it in those words, because nobody on earth would understand those words in the draft?

Sir H. LLEWELLYN SMITH: I am sure Mr. Liddell will be glad to consider any suggestion.

The PRESIDENT: If you read the last five lines, that is really the point of it; that explains the point. "But save as provided by such an Order" (as Sir Hubert has explained) "this Act shall not apply to any work the author whereof is "resident in such a Dominion" (that is to say, a Dominion which has not assented), "whether he is a British subject or not, and if any work in which copyright subsists "by virtue of this Act is first published in such a Dominion the copyright in the "work shall cease on such publication," that is to say, if the Dominion is a non-assenting Dominion, unless by Order in Council such an author will only obtain in the rest of the Empire such copyright as may be granted by the Order in Council.

Mr. FISHER: That seems to me to be quite fair and right.

LORD TENNYSON: It is quite right; but it is exceedingly difficult to understand this clause.

Mr. FISHER: I confess I read it more than once and did not quite understand it, but I am not going to criticise it.

The PRESIDENT: May I venture to say that at our first meeting, when I think Sir Richard asked for the Bill, I said I thought you would do better if we gave you the heads in ordinary common or garden English rather than in legal terms, but you preferred the Bill?

LORD TENNYSON: I do not think anybody versed in Bills really could understand this.

The PRESIDENT: We will see what we can do to simplify it.

Mr. LIDDELL: The principle as stated by Sir Hubert Llewellyn Smith is exact; you have got nothing to say against the principle?

Mr. FISHER: No.

The PRESIDENT: We will see if we can make it a little clearer.

Sir H. LLEWELLYN SMITH: Shall I go on with clause 30?

The PRESIDENT: Yes, please.

Sir H. LLEWELLYN SMITH: On clause 30 I have nothing to say except that it reproduces an existing Act, the Foreign Reprints Act, and it is for this Conference to say whether they wish that to be maintained in this form.

Mr. LIDDELL: Paragraphs (a), (b), (c), (d) are new.

Sir H. LLEWELLYN SMITH: Yes. I am reminded, that the additions (a), (b), (c), (d), are new.

Mr. FISHER: Will you just go on and explain that too, and we will come back to it again if necessary?

Sir H. LLEWELLYN SMITH: Perhaps you will explain it, Mr. Liddell.

Mr. FISHER: I meant we would not discuss it just now.

Sir H. LLEWELLYN SMITH: It is a different subject rather.

Mr. FISHER: Besides there are some points in it I wish to discuss a little when we come to the discussion of it. I thought you were going on with something else first.

The PRESIDENT: Those are practically all these clauses. That being so, Sir Hubert having put you in possession of what we had in our minds with regard to it, perhaps we had better take them one by one, and I think, perhaps, the simplest way would be for me to read them slowly and stop at any point where there is likely to be discussion.

LORD TENNYSON: Might I read a telegram I have just received from the Australian Government?

The PRESIDENT: Please.

LORD TENNYSON: I sent them the four resolutions, and they say: "We approve Resolution 1 on understanding that Draft Imperial Bill be submitted to us for suggestions before introduction. Resolution 2; it is assumed that assent of Dominion is not intended to be irrevocable for all time. We would prefer our own scheme as being simpler and stronger in direction of unity, but if that unattainable we approve on above assumption. Resolution 3 seems complicated, and we would decidedly prefer our own scheme, but if that impossible, will accept. We approve Resolution 4. We suggest further efforts to secure our full scheme, if possible. In any case, if Canada does not intend adopt new Imperial copy-right, would be unwise to risk unity of rest of Empire. Your telegram 17th May was not suggesting that details of Bills going through Parliament should be considered by Commonwealth, but that Commonwealth should have opportunity to consider Draft Bill and make suggestions before introduction. Objections as to architecture and choreographic works not to stand in the way of uniform law."

The PRESIDENT: I think that should be on record. With regard to the first point, I should like to ask, do you gather that they want the Bill which we now have before us, after we have agreed on it, sent out to them to be considered out there?

LORD TENNYSON: I might send out this copy.

The PRESIDENT: Our submission to you will not be sufficient?

LORD TENNYSON: I am afraid not. We could easily get it back before the autumn session which is the earliest time at which you would be able to consider it.

The PRESIDENT: We could get it back, yes; but I take it that if it goes to one, it will go to all, and the difficulty I foresee about it is the going backwards and forwards. If the Bill goes out to Australia they might accept it as it stands, but supposing they did not, and wanted certain alterations, and then the Cape would want certain alterations, and Canada would want certain alterations, and I am afraid it looks rather a difficult business to agree on the final shape of the Bill. I do not object for a moment to your seeing it and considering it; the only thing is that I would have to venture to suggest that if they had been able to leave it in your hands, and the other Dominions the same, in the hands of their representatives, we should have been more likely to arrive at an early and final conclusion. I do not know whether you would care to suggest that from me. Would you like to consider it at our next meeting; talk it over with the other delegates and then take it up at the next meeting?



Mr. FISHER: I was going to ask, Mr. Buxton, whether in view of the desirability, if not the necessity, of giving an answer to the International Union within a week or two you would not be able to press the Bill a little and try to work it through. Of course you cannot put the Bill through Parliament in that time, but is it not understood that you must give an answer to the International Union this month?

The PRESIDENT: The Foreign Office have already notified, or are about to notify, them that it will not be possible for us to ratify at the fixed date but that it must not be taken in any sense that we are not to do our best to ratify. We have had some communication about it. That is so, Mr. Law?

Mr. LAW: Yes.

Mr. FISHER: You spoke the other day about not getting the Bill through this session. Did that mean only the present sitting of the House, or would that include the autumn session too?

The PRESIDENT: I am afraid it might include the autumn session as well, because you must remember that this Bill will not go through very easily; it will be a contentious measure in a sense. It is a very complicated question affecting a great number of interests, and there is no doubt it will create a considerable amount, I do not say of opposition, but of criticism, and so on.

Mr. FISHER: And discussion.

The PRESIDENT: And the position of the Government so far with regard to this session is that they undertook at the beginning, in view of the then political position, not to introduce legislation which would be considered of a really controversial nature. It is possible that this Bill might not necessarily come under that category. I am not able at the present moment to undertake to introduce it in the autumn, although, of course, I should be very anxious to get it through if we could. But whether it is now or next session I do not think quite touches the point I have in my mind, namely, the almost impossibility of sending a Draft Bill of this sort backwards and forwards to the various Colonies in an attempt to meet them. Of course, if none of them made any alterations it would be simple enough; but supposing they made alterations, that would mean in each case sending it back to all of them again. I really do not see any prospect of introducing the Bill before the summer. We have as much as we can do now, and I do not know that there will be an autumn session. Might we consider the point at our next meeting, perhaps after you have had an opportunity of talking it over with the other representatives? I should personally prefer that the various Dominions should be prepared to assent to the Bill as it passes this Conference. Shall we adjourn that particular point? I raised it on your telegram, Lord Tennyson.

LORD TENNYSON: Yes.

The PRESIDENT: As regards the rest of your telegram we will have it, of course, on the notes, and we note with satisfaction their desire to come to an agreement with regard to the matter.

Mr. FISHER: Excuse me one moment; there is just a matter in connection with what you have just said about the assent to this Bill. I have not yet had the opportunity of examining it sufficiently, but it strikes me rather that in our legislation we would almost have to introduce a Bill embodying the provisions of this Bill; but I am a little afraid I would have to consider it very closely from the point of view of the drafting of our statutes, whether it would be possible for us just to pass a Bill embodying this Act as it stands in wording and everything for Canada. There would be a number of special provisions in this Act which applied only to you, and which would not apply to us, and some of which would have to be materially changed

in our methods of administration to apply to us. I have been talking a little with Mr. Ritchie about it, and I cannot say I have come to any conclusion as to whether we should pass an Act just embodying this and saying this should apply to Canada, or whether we would have to draft an Act passing our Parliament embodying the same ideas.

Sir H. LLEWELLYN SMITH: Would not clause 29 give you sufficient power of adapting the procedure?

Mr. FISHER: I think the powers here granted are quite sufficient, but at the same time as a matter of legislation in our Parliament I am not quite sure how we should have to work that. We might have to draft another Bill and put it through our Parliament, which would really embody all the points in this Bill. I quite agree with this Bill, but that is a matter about which I would have to consult the authorities at home about, I am afraid.

The PRESIDENT: I was not at first obviously going to ask any of the Dominions necessarily to accept the Bill. The Government here must to a certain extent introduce it on its own responsibility, and, of course, I cannot guarantee that it will not be knocked about in Committee and so on. It might come out a somewhat different Bill, and even after that, of course, each Dominion will have a free hand to accept it then as a whole or in part. That also has to be recollected. I should be very glad if I could guarantee the Bill going through in Committee without alteration.

LORD TENNYSON: That is what this covers; they do not suggest that the details of the Bill going through Parliament should be submitted to them.

The PRESIDENT: Of course details of a Bill of this sort largely affect the principle. I have not really at the present moment any idea how this Bill will be received. It is a very complicated question. I think the fact of our having had this Conference, and all the Dominions and the Imperial Government desiring, as far as possible, to get unanimity on the question, and to have as few alterations from the Berlin Convention as possible, will help.

LORD TENNYSON: You have all the Australian memoranda printed in "the Imperial Conference Secretariat Print (Dominions, No. 23).

Mr. LIDDELL: There is just one point. I think it will have to be "This Act" instead of "This Part of this Act," and so throughout.

Sir H. LLEWELLYN SMITH: Clearly.

The PRESIDENT: "Application of Act to British Dominions: (1) This Part of this Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, shall extend throughout His Majesty's dominions: Provided that it shall not extend to a self-governing Dominion without the assent of that Dominion." That is practically word for word—with the legal alteration—our Resolution 2, which we agreed to.

LORD TENNYSON: I was going to say that I had a little difficulty on behalf of the Commonwealth in accepting this resolution, but since I have had some assurances from Sir Hubert, which I should like to read out, I have been quite convinced that he is right.

The PRESIDENT: Perhaps you had better have it on record.

LORD TENNYSON: "The answers to your questions are, I think, as follows" —



The PRESIDENT: May we have the questions?

LORD TENNYSON: I am afraid I have not got the questions, but the answers are what are important: "The suggested reservation would, of itself, have no direct effect on the position of United States citizens in respect of copyright. It would merely be a declaration that in ratifying the Convention we do not intend to come under any binding obligations towards the other countries of the Union with respect to our treatment of the citizens of the United States. The effect would be to give a free hand to deal with the United States as we may think proper, but it would in no way indicate the lines on which we should proceed. When you see the Draft Bill which we are preparing, you will see that it is proposed to divide it into three parts:—(1) Defining rights of British subjects and residents in the British Empire; (2) dealing with application of the Act to Dominions; (3) giving power by Order in Council to extend the rights given under Part I. to citizens of any foreign country specified in the Order, subject to suitable conditions. Governors of self-governing Dominions would issue corresponding Orders in Council. If we ratify the Convention we must, of course unreservedly, include all Convention countries in the Order in Council under Part (3), and we shall be free, so far as international obligations are concerned, to include the United States, either unreservedly or subject to conditions, or to exclude her altogether. Canada, if she ratifies the Convention, will be in a similar position. She must include Convention countries, and may include the United States. One possible thing that might happen would, I suppose, be that we in the United Kingdom would include, and Canada would exclude, the United States in the respective Orders in Council. Assuming this to be the case, American citizens would enjoy in the United Kingdom all the privileges of British citizens, but they would not be able to claim copyright in Canada by publishing in the United Kingdom, and their rights in Canada would be determined by Canadian law pure and simple. What the rights of the American citizens in other countries of the Union would be would of course depend on the laws of those countries, but as Article VI. would presumably stand with respect to all countries which do not make an express reservation, I imagine that it would be correct to say that American authors by publishing in the United Kingdom would obtain copyright in the other countries of the Union—except such countries, if any, as reserve Article VI." That is a very useful and clear letter.

Mr. FISHER: That will be on record.

The PRESIDENT: Yes, and states the position that we believe to be the fact. Now subsection (2).

Mr. FISHER: May I say a word in regard to subsection (1) of clause 27? This is really in the words of our resolution. I was quite in accord with those words as a resolution, but it struck me that in the Act that it would be better, if it would be agreeable to others, to say: "Provided that it shall not extend to a self-governing Dominion except by the action of that Dominion." I mean that assent means to a certain extent the adoption of this Act, but as I am rather inclined to think it would be necessary for us to pass a law which would embody the principles of this Act, but not the Act itself, I think it would be better not to say that it was an assent of the Parliament of Canada, but that it was the action of the Parliament of Canada.

Mr. LIDDELL: In that case this Act would not apply to Canada at all.

Mr. FISHER: No, this Act would not apply to Canada at all.

Mr. LIDDELL: Therefore it would not apply even by the action of Canada.

Mr. FISHER: Well, perhaps not.

Mr. LIDDELL: Technically.

Mr. FISHER: Technically, no. The point I had in mind was—I have thought more about it since, and as I read this I am the more convinced that what we will

practically have to do will be to pass an Act of our own embodying the principles of this Act, and this clause here means practically, as far as I can see, that it would be a mere assent to this Act making it in force in Canada. Perhaps my suggested words would mean just the same thing.

Mr. LIDDELL: Of course the adoption of this Act by the Dominion would really only necessarily imply the application of clauses 1, 2, and 3.

Sir H. LLEWELLYN SMITH: We have had this point very much in our minds, but we do not see how to deal with it. We felt that either this Act applied or it did not. A substantially identical Act passed by Canada might to all intents and purposes, of course, fulfil the same objects, but this Act would not extend to Canada. Clause 27 only deals with the conditions under which this Act of its own force extends to a self-governing Dominion. I do not think if you passed your own Act you would come in under clause 27.

The PRESIDENT: You must accept the Act as a whole, practically.

Sir H. LLEWELLYN SMITH: I do not know whether it is possible to redraft it so that it should have that effect.

Mr. TEMPLE FRANKS: There could be a proviso to that effect I suppose—that where a self-governing Dominion adopted the Act, by adopting the provisions of the Act in its own legislative enactments, that would be equivalent to assenting to this Act and they should have the same rights and privileges, or something of that kind. I think there is a *casus omissus* here.

Sir H. LLEWELLYN SMITH: Clause 28 (3) gives the power by Order in Council to give them the whole benefits of this Act.

Sir RICHARD SOLOMON: I read 28 (3) as you say. I wish you could make it clear. That is the difficulty about it and I know Lord Tennyson has the same view. I take it from your explanation that the Order mentioned in 28 (3) is intended to apply to those self-governing Dominions which do not assent to this Act but which pass similar legislation to it.

Mr. LIDDELL: Not necessarily similar legislation.

Sir RICHARD SOLOMON: Which passes an Act adopting the principles of this Act but modifying the procedure.

The PRESIDENT: So far as they adopted this Act and gave copyright to other parts of the Empire, so far under this Order in Council they would receive reciprocity, but so far as they limited it, under the Order in Council the benefit would be limited also. There would probably be a reciprocal Order in Council.

Sir H. LLEWELLYN SMITH: You might try your hand at 28 (3) to clarify it, Mr. Liddell.

The PRESIDENT: It is rather difficult, Mr. Fisher.

Sir H. LLEWELLYN SMITH: Because it is the case of a Dominion passing practically the same thing only drafted differently.

Mr. FISHER: What would then constitute assent? Supposing any of the self-governing Dominions pass an Act in which they make certain provisions in their own language practically covering the provisions of this Act, it would be entirely superfluous to put a clause into that Act adopting this Act and yet if this Act were to be adopted in itself in the first place there are a number of provisions in this Act which would not apply at all to our administration and it is probably the same with the other self-governing Dominions and which therefore ought not to be made law in Canada or Australia or South Africa, and yet we would have to put other provisions in



regard to our law; now you have a provision here for registration and things like that. Those provisions would not apply to us and we would have to have our own provisions for registration and so on.

The PRESIDENT: We should have to define the clauses of the Imperial Act which apply.

Mr. FISHER: That may be the clauses of the Imperial Act which would apply.

Sir H. LLEWELLYN SMITH: The hope was that clause 29 would meet this, that the legislation of the self-governing Dominion might assent to the Act and add modifications and additions regarding the procedure and remedies which would bring it into accord with their requirements, that was the hope.

The PRESIDENT: Mr. Fisher's difficulty is, what does assent mean? Does assent mean assent to the whole Act as it stands? Many of its provisions are obviously inapplicable to a particular Dominion.

Sir H. LLEWELLYN SMITH: It might be put "except such provisions as are expressly restricted to the United Kingdom" and registration is one of these.

The PRESIDENT: Also what is the definition of assent?

LORD TENNYSON: Might I suggest "without the assent or the necessary action"?

The PRESIDENT: What does "action" mean?

Mr. TEMPLE FRANKS: You want something like "practical adoption."

Mr. FISHER: If all the Dominions concurred with me for Canada in the idea that it must be by legislation, we could say "or without the legislation of that Dominion" but I understood that some of you did not like that.

The PRESIDENT: I think we did discuss that, you remember, and I thought two at least of the delegates thought they did not wish to be necessarily restricted to legislative action.

Mr. FISHER: That is so and if it were not for that we might put in "without legislation."

Sir H. LLEWELLYN SMITH: I think the Colonial Office had something to say about that.

Mr. JUST: It was only this, that I understood the Parliamentary draftsman said, that "without the assent of the Dominion" would imply that the assent must be given by legislation and that the words therefore in this section absolutely compelled legislation.

Sir RICHARD SOLOMON: The assent can only be given by legislation; I do not know any other way of giving assent.

Mr. JUST: Therefore it does not meet the proposal that it should be done by Order in Council; if it is to be done by Order in Council specific words must be used to say that that is one of the alternative methods.

Sir RICHARD SOLOMON: Would Mr. Fisher object to that?

Mr. FISHER: I would not object to that.

Mr. JUST: The point is this, that the assent of the Dominion implies legislation, if the words are left as they stand in the Bill, not stating any alternative method of signifying assent.

The PRESIDENT: What do you think, Mr. Liddell?

Mr. LIDDELL: I am pretty clear that the assent could not be given except by legislation, because the effect of giving the assent is to legislate.

LORD TENNYSON: "Without the legislative or other assent."

Mr. FISHER: That was my original slight objection to the idea of assent. It seems to imply, at any rate in this Imperial Act, that this Act gives the power or confers the power upon somebody or some authority to make this Act effective in a self-governing Dominion without legislation, which seems to me to be entirely inadmissible according to my ideas of self-government; but I would not like to impose that upon other people who do not feel as I do upon that matter.

Mr. JUST: The question is whether it would meet the point to do as was suggested, I think, at the first meeting and actually in terms to state the alternatives in this Bill, that is to say, "without the assent of that Dominion to be signified either by Order of the Governor in Council or by resolution or enactment of the Dominion Legislature."

The PRESIDENT: Those are the three alternatives we discussed originally; I think at that time they did not meet with much favour, but possibly the difficulties of obtaining a solution may have modified your opinions.

Sir RICHARD SOLOMON: A resolution could not be in force in a self-governing Dominion unless they passed an Act there authorising them to do so.

The PRESIDENT: You are objecting to the word "resolution."

Sir RICHARD SOLOMON: Yes.

Mr. JUST: I think Mr. Hall Jones had another view.

Mr. HALL JONES: I do not think for a moment any self-governing Dominion would adopt this Act otherwise than by legislation. You may provide for an Order in Council if you like, but he would be a bold man who would propose to adopt it by an Order in Council.

Mr. FISHER: I go a little bit further; I do not like the idea of this Act apparently conferring the authority on the Governor in Council to do this. I do not like that.

The PRESIDENT: I gather that New Zealand, the Cape now apparently, and Canada, all think they would have to pass something in the nature of the Act. It might be the Act *en bloc*. What do you think, Lord Tennyson, about Australia? I think you rather thought, at the beginning at all events, that it would not be necessary for them to pass an Act, and we are all agreed that it would be advantageous not necessarily to do so because of the difficulties of the time and alteration. It looks a little as if it would be necessary to have legislation.

LORD TENNYSON: I think with these opinions already given I should not like to express an opinion on that offhand.

The PRESIDENT: Of course your suggestion might meet it: "without legislative or other assent."

LORD TENNYSON: I think that is the best way.

The PRESIDENT: That is to say, if they could get round it without legislation, so much the better.

Mr. FISHER: I do not object to that at all.



Mr. TEMPLE FRANKS: Does not that leave open the point whether the mere adoption of the provisions of the Bill by legislation is legislative assent by Canada? There is a slight ambiguity there still.

The PRESIDENT: That would be legislative assent.

Mr. TEMPLE FRANKS: Assent to the extension of this Act? It is hardly an assent to the extension of this Act; it is the adoption of the principles of this particular Act by Canada.

The PRESIDENT: I should have thought the words "legislative or" would surely cover Mr. Fisher's case, and might leave a loophole for Australia if they did not wish to do it by legislation.

Mr. TEMPLE FRANKS: But the point is a little more than that; it is whether the adoption of the principles of this Act in the Colony's own particular statute is necessarily legislative assent. It is not necessarily legislative assent to the extension of this Act throughout the particular Dominion or Possession.

Mr. ASKWITH: The question is whether practical adoption is legislative assent.

LORD TENNYSON: Shall I cable to the Commonwealth Government and find out their views?

The PRESIDENT: There is no doubt that would simplify the difficulty we have found ourselves in. You would ask whether they would be prepared to introduce a Bill?

LORD TENNYSON: Yes.

The PRESIDENT: Of course the Bill might be a very simple one, simply adopting the Act.

LORD TENNYSON: That is all.

Mr. FISHER: It could even be a Bill authorising the Governor-General in Council to issue a proclamation.

The PRESIDENT: I think it might be as well to do that, and we might conditionally adopt the words "without legislative or other assent," and we will consider the clause at our next meeting with regard to the wording, apart from that question. Then "(2) As soon as such assent has been obtained the Governor of the Dominion shall notify the fact to the Secretary of State, and the Secretary of State shall publish such notification in the 'London Gazette,' and the publication of such notification in the 'London Gazette' shall be conclusive evidence that the Dominion has assented, and that this part of this Act, except as aforesaid, is in force within that Dominion."

Mr. LIDDELL: You will not want that if you are to have legislation in each colony. The Act speaks for itself.

Mr. FISHER: This is simply for you to give notice that the Act has been passed.

Mr. LIDDELL: Yes.

Mr. FISHER: There is no objection to that at all.

Mr. LIDDELL: It will not be necessary if you have an Act in every case. The question then is, has the Act been passed, not whether it has been notified to the Secretary of State.

Mr. FISHER: Of course it would be notified.

The PRESIDENT: That rather depends on what conclusion we come to on the first point. Then clause 28 (1): "The Legislature of any self-governing Dominion may at any time repeal all or any of the enactments relating to copyright passed by Parliament (including this Act) so far as they are operative within that Dominion: Provided that no such repeal shall prejudicially affect any legal rights existing at the time of the repeal." That is practically our third resolution. "(2) In any self-governing Dominion which does not assent to this Act the enactments repealed by this Act shall, so far as they are operative in that Dominion, continue in force until repealed by the Legislature of that Dominion." That, as Sir Hubert has pointed out, was temporarily to bridge the interval.

Mr. LIDDELL: Of course that will necessitate English authors during this period of transition going through all the formalities required by the existing Acts in order to get their copyright in a non-assenting Dominion.

Mr. FISHER: "In so far as the assenting Dominions are concerned."

The PRESIDENT: I do not think you can help that. I will not read (3) because some members of the Conference are unable to understand it, but I would like just to explain what it does mean, if I can do it clearly. In the event of a Dominion not assenting to the Imperial Act and standing outside, the authors in that Dominion will not receive any of the benefits of the Imperial Act, or of the Imperial Act so far as it is adopted by any of the other Dominions, that is to say, in the other Dominions; but by an Order in Council the Act and the benefits of the Act can be extended to this Dominion that stands outside, either so far reciprocally as that Dominion gives advantages to Great Britain or to the other Dominions—it can either give them more or less or give them actually reciprocal advantages; that is the main object of it.

Sir H. LLEWELLYN SMITH: We have not in the drafting of this gone quite so far as that. We have conceived that either the Order in Council giving the whole benefits of the Act would be justified or it would not. We have not thought that supposing Canada gave life and 30 years, and the Imperial Act gave life and 50 years, we should cut down the term. That is not provided for in the Bill as drafted.

The PRESIDENT: No, but we were rather talking from the reciprocal point of view just now.

Sir H. LLEWELLYN SMITH: I would still point out that this does not provide for precise reciprocity in that sense; it says, "except such parts as may be specified," but it does not say "subject to such modifications." It does not give us power to give them half a loaf. I thought it was not necessary. It would be extremely complicated to give anything short of the whole privileges; in fact, it would be extremely difficult in practice to work the system.

The PRESIDENT: I think there is some force in that; I am afraid I used the word "reciprocally" wrongly. We have been talking about it, and I thought the words did imply that we should act reciprocally, but probably it would be better to give the advantages of the Imperial Act as a whole or to refuse them. What do you think about this point of view, Mr. Fisher? The alternatives really are, whether in the case of a Dominion which does not assent to the Imperial Act, that Dominion thereupon passing a Copyright Act giving certain advantages to the other Dominions and to Great Britain, the Order in Council should extend to that Dominion the whole of the advantages, without exception, of the Imperial Act, or whether it should do it to a certain extent on reciprocal grounds; that is to say, if the Dominion had passed an Act with somewhat less advantages than those contained in the Imperial Act, whether they should be given merely reciprocal advantages. As a matter of justice, probably reciprocity would be right, but Sir Hubert has pointed out that it might lead



to great administrative difficulties and complications, whereas what we want in this matter is simplicity. I am inclined to think myself that it is better to have all or none.

Mr. FISHER: I do not think it is a point upon which I ought perhaps to advise, because it only refers to Great Britain; that is to say, by this clause your Government takes the right or is given the right by your Parliament to extend certain privileges to a Dominion which is not assenting to the Act. It is not a question I think for any Dominion which does not assent to the Act to say how much of those privileges should be given. It is a favour to that Dominion. In the other self-governing Dominions, supposing this Order in Council were to be passed extending the provisions of this Act, we will say, for example, to Canada—I hope they will not, but still it might possibly stand out—that would not give, in Canada, any rights to anybody except what the Canadian law gave; it would only give rights to Canadians in Great Britain, and I do not gather from the general tenor of the Act that it would give any rights to a Canadian in, for instance, Australia.

Mr. LIDDELL: Yes, it would.

The PRESIDENT: Where the Act ran.

Mr. FISHER: Yes.

Sir H. LLEWELLYN SMITH: Assuming for the moment the other possibility, that Canada was one of the Dominions in which the Act ran and had to consider what it would give to a Dominion that stood out, there you would be affected, you see.

Mr. FISHER: Yes, I see that.

The PRESIDENT: You had better take a Dominion that is not likely to stand out. What do you say, Lord Tennyson?

LORD TENNYSON: I think that a question for the British Government and not anything to do with the Colonies.

The PRESIDENT: As far as we are concerned it is really a question of simplification more than anything else; it is a comparatively small matter.

Mr. FISHER: I do not think it is a very important matter, and I do not think it will grow, because if at any time your Government was to give a privilege to somebody else that any self-governing Dominion within the Act objected to, they would have their remedy; it would be an unfortunate remedy, but still they have their remedy all the time.

The PRESIDENT: We will redraw this clause in the light of that, and make it clearer.

The PRESIDENT: Then clause 29.

Sir RICHARD SOLOMON: Before you go to clause 29, I do not want to waste time, but may I revert for one moment to clause 27, as I wish to make a suggestion? I understand it is to stand over for consideration.

The PRESIDENT: Yes.

Sir RICHARD SOLOMON: What I want to say is, that I am quite satisfied in my own mind that assent cannot be given to this Act by any Dominion Parliament without legislation and, therefore, it is just as well to say so. I also doubt very much whether any Dominion will pass legislation taking over the whole of this Act, and

then have to pass subsequent legislation modifying it in certain ways. I was going to suggest this for consideration—that the proviso to clause 27 (1) should read as follows: "Provided that it shall not extend to a self-governing Dominion unless put in force there by the Parliament thereof with or without such modifications and additions as relate to procedure and remedies." Perhaps I can have that considered.

The PRESIDENT: We will have it on record and we can consider it. We will consider that along with the other words which have been suggested. Clause 29 "The Legislature of any British possession to which this Part of this Act extends" may modify or add to any of the provisions of this Act in its application to the possession, but, except so far as such modifications and additions relate to procedure and remedies, they shall apply only to works the authors whereof are resident in the possession and to works first published in the possession." Sir Hubert has already explained that. Will that meet the Indian point, Sir Thomas?

Sir THOMAS RALEIGH: Yes, I think so.

The PRESIDENT: Is there anything to be said upon that point?

Mr. FISHER: I confess I am not quite sure; I think I understand exactly what this means but I am not quite sure how it is to work out in its administration. It practically means, does it not? that they shall apply only to works which are copyrighted under the law of that Dominion.

Sir H. LLEWELLYN SMITH: Yes, I think so.

Mr. FISHER: Now, I may hark back for a moment to what I think would be Canada's position under the new law, and that is that we would not give copyright to any citizen or subject of a country not within the Union. We would want to give it to people who were the subjects or citizens of countries within the Union, but still not under the copyright law of Canada; that is to say, we would want to restrict these privileges to part of the people who had copyright, we will say in Australia or in Great Britain, and not to others; but I am afraid under this clause we would not be free to do that.

Sir H. LLEWELLYN SMITH: You would not do it under that clause, Mr. Fisher, but you would be free to do it.

Mr. FISHER: I think we would be free to do it under the other provisions of the Act; but still, ought not that possible extension to be embodied in this clause as well?

The PRESIDENT: I am sorry I do not quite follow.

Mr. FISHER: As I understand this, Mr. Buxton, the clause would say that these provisions, "except so far as such modifications and additions relate to procedure and remedies, shall apply only to works the authors whereof are resident in the possession and to works first published in the possession." That means practically to the citizens of that Dominion. Now, we would wish to grant, we will say, to British subjects in Great Britain all our privileges.

The PRESIDENT: I see your point now.

Mr. FISHER: But if an American got a privilege in Great Britain by reason of your local legislation we would not want to give it to him.

The PRESIDENT: I quite see; I misapprehended it at first. That is governed by clause 33 (2).



Mr. FISHER: That point is governed very completely.

The PRESIDENT: Will you look at clause 33? You might consider that now.

Sir H. LLEWELLYN SMITH: That is international.

The PRESIDENT: At the bottom of page 17 it says: "The Governor in Council of any self-governing Dominion to which Part I. of this Act extends may, as respects that Dominion, make the like orders as under this Part of this Act His Majesty in Council is authorised to make."

Mr. FISHER: Yes, but that is only with regard to the international aspect.

Mr. LIDDELL: Yes, with regard to the international—

Sir H. LLEWELLYN SMITH: Extending the privileges to the foreign country.

The PRESIDENT: We should be international in that respect, you see.

Mr. FISHER: That is just the point. I was thinking of Great Britain as not a foreign country under part of the restrictions that we might embody in our Act.

Sir H. LLEWELLYN SMITH: Mr. Fisher, clause 29 only applies to the legislation of a British Possession to which this Act extends, and you would be bound to give Great Britain the privileges. It is all governed by those words; if this Act does not extend to you, you would have free power.

Mr. FISHER: Supposing this Act did extend to us, and supposing you granted rights to a foreigner.

Mr. LIDDELL: By Order in Council?

Mr. FISHER: By Order in Council.

Mr. LIDDELL: That would not apply to Canada?

Sir H. LLEWELLYN SMITH: We grant it under Order in Council, and that Order in Council does not run in the self-governing Dominion. That is provided for under 33. "An Order in Council under this Part of this Act" (which is the Order under which we would extend the privileges to a foreign country) "shall apply to all His Majesty's Dominions except to self-governing Dominions." That is clause 33.

The PRESIDENT: 33 (1) is confined to British subjects—the Act, as a whole, apart from the Order in Council. The Order in Council confines it to other countries and excludes the Dominions.

Sir H. LLEWELLYN SMITH: The machinery for extending it to foreign countries is an Order in Council which a self-governing Dominion does not come under.

The PRESIDENT: I think your protection is that under clause 33 (1) the Act, as a whole, is confined to British subjects. Under clause 33 it can be extended by Order in Council to other countries, but that does not extend it to the Dominions.

Sir H. LLEWELLYN SMITH: Of course, we have not discussed Part II.

The PRESIDENT: May we take it subject to what you have said, and re-discuss the question, if necessary, when we come to clause 33?

Mr. FISHER: Yes.

The PRESIDENT: As regards clause 30, I do not think I need read it; it is the question of foreign reprints. I think, Mr. Fisher, you said you had some point to

deal with. It is a suggestion which was thrown out by the Colonial Office some time ago in their correspondence with the Canadian Dominion and others.

Mr. FISHER: What I was going to suggest here was that this should apply only to the British Possessions not possessing self-government.

The PRESIDENT: I think the Cape was rather against that.

Mr. FISHER: Or such self-governing Possessions as may adhere to it or adopt it.

Mr. LIDDELL: Of course it is open to any Possession not to make provisions corresponding to (a), (b), (c), (d), and then it would not extend.

Mr. FISHER: It would be under their own legislation.

Sir H. LLEWELLYN SMITH: We put this in as being the existing law just to raise a discussion, but from our point of view we do not see any object in having the clause in at all.

Sir RICHARD SOLOMON: Supposing we publish a work, it is a privilege if the Dominion takes over the Foreign Reprints Act: it is a concession.

Sir H. LLEWELLYN SMITH: If it is not asked for it is better from the United Kingdom point of view not to have it in.

Mr. ASKWITH: I understood that in South Africa you were rather keen about it.

Sir RICHARD SOLOMON: We want it there.

Mr. ASKWITH: I understood you were. You said a few words to me the other day about the Foreign Reprints.

Sir RICHARD SOLOMON: I think what I said was that it would be of no practical use to us—the Foreign Reprints Act.

Mr. ASKWITH: I thought you said you wanted it for South Africa.

Sir RICHARD SOLOMON: No.

Mr. ASKWITH: Then I misunderstood you.

Sir RICHARD SOLOMON: We have the Foreign Reprints Act there, but it is a dead letter practically.

Mr. FISHER: We had it at one time and we dropped it—gave it up.

Sir H. LLEWELLYN SMITH: We thought it best to leave it in just to raise a discussion, but we do not want it.

The PRESIDENT: We would much rather have it out as it is a complicated question.

Mr. FISHER: So far as we are concerned we do not want it at all.



Mr. TEMPLE FRANKS: It might be needed for some of the smaller Possessions, although it might not be needed, and probably is not needed, for the larger self-governing Dominions.

Sir H. LLEWELLYN SMITH: We might have to put it in for some of the other Possessions.

Mr. TEMPLE FRANKS: The Act was originally passed for that reason.

The PRESIDENT: We will consider Part II. before we go back to the other clauses because that affects considerably the question of the Dominions as well. Clauses 31, 32, and 33 which apply to "power to extend Act to foreign works" substantially reproduce existing provisions merely with the changes necessitated by the earlier provisions of the Bill and by the Berlin Convention. Clause 31 (a)—(this is really the American clause)—is to enable us to extend if we think it necessary, or advisable, the advantages of this Act as far as Great Britain is concerned, to a foreign country. It would enable us to continue our present agreement with America.

Sir H. LLEWELLYN SMITH: And all the Convention countries.

The PRESIDENT: And the Convention countries. Of course, there is no question about them; they would come in anyhow, but I only want to point out that this is really the American clause, and we consider that Canada, for instance, which is the Dominion affected, is guarded by 33 (2) which we have already considered.

Mr. FISHER: Oh, yes, I think that is all right. This practically authorises you, anybody under the Act, to grant the privileges of copyright protection to any country that they choose, whether it is within or without the Union.

Mr. LIDDELL: And subject to any conditions.

The PRESIDENT: Of course, it would be assumed that with regard to all the countries in the Union the privileges of the Act would be unquestionably extended. With regard to countries outside the Union, it would be considered, in the first place, whether this should be done with regard to that country, and, secondly, whether it should be done with any modifications. Is there anything else upon that?

I think, if it is convenient, we should now turn back to the earlier clauses, the ones that apply generally. We have done number 1. As to number 2, this is the question of the period, and I do not know that there is any point on 2 except the period. I think, Lord Tennyson, you intended to raise some point on the period or some other point.

LORD TENNYSON: "Joint authorship" (b) that alters what is the existing law, and is, I think, unfair. There is an instance of what I meant in the case of Davies and Vaughan, joint authors of a translation of Plato's Republic. Davies is living, but he would have lost his copyright under this clause.

The PRESIDENT: I thought the point was, that if the copyright was extended for a period over the existing period, it might extend it so very largely if you had a young person and not an older person.

LORD TENNYSON: You would have to prevent fraud, of course.

The PRESIDENT: I think if we accepted your 50 years, it would be necessary to put this in.

Mr. LAW: I suggest it might cover the lives of all of them or 50 years after the one who dies first.

The PRESIDENT: I think that is intended.

Mr. LIDDELL: That is the effect.

The PRESIDENT: Not of the wording; it says, "the life of the author."

Mr. LIDDELL: Who dies first.

Sir H. LLEWELLYN SMITH: If the other lived beyond him more than  $x$  years, it would expire during the lifetime of the second man.

The PRESIDENT: I think his life ought to go in.

LORD TENNYSON: I think his life ought to come in.

Sir THOMAS RALEIGH: And after that for  $x$  years or for the life of the other joint author, whichever period is the longer.

LORD TENNYSON: Yes.

Mr. FISHER: Would not you change the word "first" into the word "last," and make it the one who lives longest?

Mr. LAW: The one who last dies, and 50 years after the first.

Mr. TEMPLE FRANKS: That raises the point which Mr. Buxton was speaking of just now, that you might get the periods indefinitely prolonged if you have a very young author joined.

The PRESIDENT: It could quite easily be done.

Mr. TEMPLE FRANKS: He might be fraudulently joined in many cases.

Sir H. LLEWELLYN SMITH: The case frequently arises in scientific books which are kept up to date with new additions; a veteran associates with him a youngster fresh from the University, who devils the thing up, and it appears under the joint names.

The PRESIDENT: I think both lives ought to be covered or the first life and  $x$  years. Then I should like to raise this point apart from the question of the years. In regard to (c), we have been considering it again—the question of whether it is a proper thing and an advantage to make a distinction between photographs and records and other productions. The advantage of it is that, I think, to the public, a photograph or a record seems a more ephemeral thing than a book, and it would seem absurd to give it as long as 50 years. On the other hand, it creates a complication, which is a distinct disadvantage, and the question is whether, in the case of a photograph or a record, the prolonged period is of any real value, whether the copyright is not likely to become extinct within a few years, and whether it would make any difference really with regard to the actual protection of the public. It is simply a question of expediency as to which would be the best method of dealing with it. You have some opinion about it, Sir Hubert.

Sir H. LLEWELLYN SMITH: I was strongly in favour at first of drawing a distinction with regard to these mechanical things like records and, to some extent, photographs, and saying that they should not have so much protection as works of literature and art; but I am a little coming myself to think that the distinction is not worth making and that the ephemeral things will expire anyhow.

The PRESIDENT: What is the article in the Convention about it?

Sir H. LLEWELLYN SMITH: You are allowed to make a distinction.

The PRESIDENT: I want to see what they said.

Mr. ASKWITH: It is in the report of the Committee.



The PRESIDENT: It is at the bottom of page 39 of the Committee's Appendix where it says "For photographic works and works produced by a process analogous to photography, for posthumous works, for anonymous or pseudonymous works, the term of protection shall be regulated by the law of the country where protection is claimed." There are no records in there.

Sir H. LLEWELLYN SMITH: It comes under another clause, gramophones and the like, but the substance is the same. You can do as you please about it. On merits they ought not to have so much protection but I think the distinction is not worth making.

The PRESIDENT: Or whether the public would lose anything by it.

Mr. TEMPLE FRANKS: The only danger is holding up the liability for infringement of the copyright indefinitely; the things may expire and be of no further use, but the proprietor of the copyright in the photograph is existing somewhere, and may come down upon you at the end of a considerable period. Copyright might be revived; for purposes of extortion it might be bought up. Germany, of course, has only got 10 years for photographs, not 42.

The PRESIDENT: The photograph at present has life and seven years; the 42 years does not come in.

Sir H. LLEWELLYN SMITH: The reasons which have moved me rather to reconsider my views, are these: There is a clause in this Bill which deals with existing works and, on the general principle that this Copyright Bill gives more ample protection than is given by the present Acts, it was quite easy to say that the provisions should apply to existing works, but if in photography you gave a shorter term, or a term that might be materially shorter than life and seven years, supposing you got 25 years for example, it would often result in putting down the rights of the existing photographs, and you introduce a new complication which has to be met with new clauses. Is it not so, Mr. Liddell?

Mr. LIDDELL: Yes.

Sir H. LLEWELLYN SMITH: And the question is whether the complication is worth while.

The PRESIDENT: I may say that I see in the Report of the Departmental Committee that they recommended the same term; that is so, Mr. Askwith?

Mr. ASKWITH: Yes.

The PRESIDENT: Mr. Fisher, have you any views upon photographs?

Mr. FISHER: We have always had the same term.

The PRESIDENT: And you would be likely to continue that?

Mr. FISHER: I think the value of simplicity in the matter is so great that we would be disposed to.

The PRESIDENT: Of course, it carries records with it, which is a new thing altogether; it is no good having a distinction for records.

Mr. FISHER: No, it seems to me that most of these things would be very ephemeral and would die a natural death, and if they did not they would be of such an extraordinary value and character that they ought, perhaps, to have protection, which is of a very exceptional and unusual character.

The PRESIDENT: You would rather view it from the point of view of simplicity?

Mr. FISHER: Yes.

LORD TENNYSON: I think so, from the point of view of uniformity.

Sir RICHARD SOLOMON: I am of the same opinion.

Mr. HALL JONES: I take the same view.

The PRESIDENT: Then we will cut that clause out?

Sir H. LLEWELLYN SMITH: I think next you have to modify (a) a little.

The PRESIDENT: The wording of (a) will require alteration, (c) comes out, and (a) will have to be verbally modified, and photographs and records put in somewhere. Then 3 is as to who is the proprietor of the copyright.

Mr. LAW: Is there any reason why the word "owner" should not be substituted for "proprietor" there.

Mr. LIDDELL: I should have no objection.

Sir RICHARD SOLOMON: Are you to use the word "owner" because we prefer it?

The PRESIDENT: Very well, we will use "owner." Subsection (1) of 3, without the proviso, is simply the general law as it now stands: "Subject to the provisions of this Act, the first owner of the copyright in any work shall be the author of the work." That is the owner of the copyright. Then as to proviso (a), the explanatory memorandum says: "Under the existing law relating to paintings, drawings, and photographs (*but not other works*), the copyright in this case belongs to the person giving the order subject to an agreement in writing to the contrary."

Sir H. LLEWELLYN SMITH: This maintains that as regards those things, but it introduces as regards architecture a new principle. Almost all works of architecture are made to order. Consequently if the person who gave the order is to be in all cases the owner of the copyright in the absence of an agreement, you are not giving the architect anything in the way of protection.

Mr. FISHER: This changes that.

Sir H. LLEWELLYN SMITH: Yes, this changes that. It gives both the architect and the man who ordered the building the right of stopping infringements by any other people, but either of them has to get the consent of the other if they want to multiply the building.

The PRESIDENT: Then (b) is new; there is nothing in that. Then subsection (2) is transfer on sale. The existing law is, as to paintings, drawings, and the negatives of photographs, on the first sale the copyright lapses unless reserved by agreement in writing to either vendor or vendee; on the second and subsequent sales it remains with the vendor (if he already has it) unless assigned by agreement in writing. The copyright remains where there is a transfer on sale. That is so?

Sir H. LLEWELLYN SMITH: Yes.



The PRESIDENT: That is the difference; that seems fair.

Sir H. LLEWELLYN SMITH: It remains in the hands of the artist unless there is an agreement to the contrary, but in subsequent transfers it passes with the picture, that is to say, if Agnew gets the copyright from the artist in virtue of a written agreement, then when Agnew sells the picture without a written agreement the copyright passes from Agnew to the purchaser. That is this clause. That is not exactly the recommendation of the Committee, I think.

Mr. LIDDELL: No, I do not think it is. The question is whether it would be better not to retain it, that is to say, that you must have an assignment in writing in every case. So that if you went to a man to buy a picture, unless the person who sold you the picture could produce you an assignment in writing of the copyright to him you would know that he had not got the copyright, and therefore could not transfer it to you.

Sir RICHARD SOLOMON: You provide that he must have an assignment in writing?

Mr. LIDDELL: No, he might have bought the picture from some one who had no assignment in writing.

Sir H. LLEWELLYN SMITH: At present I think, in the absence of an agreement, the copyright lapses, nobody has got it, and that must be wrong.

Mr. LIDDELL: Cutting this clause out would not have the effect of reproducing the existing law.

The PRESIDENT: What effect would it have then?

Mr. LIDDELL: You would have in every case, in order to get the copyright, whether from the author or anyone else, to get an assignment in writing.

The PRESIDENT: You would have to go back to the original author.

Mr. LIDDELL: You would have to trace your title from the original first proprietor of the copyright.

The PRESIDENT: Under your clause it would only be from the last purchaser.

Mr. LIDDELL: You would never know where the copyright was.

The PRESIDENT: Under your clause I mean—if these words were adopted, the copyright would go on the last transfer.

Mr. LIDDELL: You could never tell whether there had not been an agreement in writing.

Mr. TEMPLE FRANKS: Still, in your case, if you are to make an agreement in writing necessary in each case, you would have a whole heap of agreements in writing; you would have one at each transfer, and there would be the same difficulty.

Sir H. LLEWELLYN SMITH: I thought there must be some simpler way than that.

Mr. TEMPLE FRANKS: I thought the idea of this clause was to effect simplification by throwing the presumption of copyright on the man who has got the work.

The PRESIDENT: I should have thought that would have been the simplest thing.

Mr. TEMPLE FRANKS: That is what this clause does practically; Mr. Liddell was suggesting an alteration.

Mr. LIDDELL: Cutting it out altogether.

Mr. TEMPLE FRANKS: And making an assignment in writing necessary in every case.

The PRESIDENT: You were speaking as if this clause had disappeared.

Mr. LIDDELL: Yes.

Mr. TEMPLE FRANKS: I think the sellers of pictures would say that was a very cumbrous process.

Mr. FISHER: That is sub-section (2) on page 4.

Mr. LIDDELL: Yes.

LORD TENNYSON: There is the leaseholder of a building demise who has copyright for 21 years, which seems rather far-fetched.

Mr. LIDDELL: Let that go out; at the same time if you had a lease for 99 years it would be very hard that you should not have the copyright in the building.

Sir H. LLEWELLYN SMITH: You can always make a written agreement.

Mr. LIDDELL: All right, let it go out.

The PRESIDENT: Then (3).

Mr. FISHER: Excuse me one moment, there is one point I do not think is covered.

The PRESIDENT: On (2)?

Mr. FISHER: Yes. Supposing an artist sells a picture, will he then have the right to reproduce?

Mr. LIDDELL: Yes, unless he has sold the copyright too.

Mr. FISHER: That is a matter of private bargain between him and the purchaser.

Mr. LIDDELL: Unless he has assigned it in writing he retains the copyright.

Sir H. LLEWELLYN SMITH: Or unless he made it to order.

Mr. LIDDELL: Yes.

Mr. FISHER: If he painted the picture to order?

Mr. LIDDELL: Then the orderer would be the first proprietor of the copyright.

The PRESIDENT: (3) "Personal property" is all right I suppose? (4) That is the power of the proprietor of the copyright to assign the right either wholly or partially. There is nothing on that.



Mr. LIDDELL: It enables you to have an assignment of the copyright limited locally; for instance, the right of performing in the provinces.

Sir H. LLEWELLYN SMITH: In other words, the change here is the addition of the words "or place" after "country." We put them in on purpose, because we thought there should be the right of assigning rights, say, in the provinces, or in one part of the country.

Mr. LIDDELL: Of course you have an exclusive licence now, but it is not quite the same.

The PRESIDENT: I understand you cannot do it.

Mr. LIDDELL: You can do it by exclusive licence.

The PRESIDENT: He can perform in one part of the country but not another under your clause.

Mr. LIDDELL: He will be able to assign his rights in the provinces altogether.

The PRESIDENT: And he can also prohibit it in one part and allow it in another?

Mr. LIDDELL: Yes.

The PRESIDENT: I think that is quite fair. I think we have really finished all we need deal with to-day, with perhaps one exception, which I may now point out, clause 7, which is the point we have discussed more than once. It is the pirate clause, that is to say, the pirate and sub-pirate. I have never liked the clause, and we understand from advice we have received that it is practically covered by the common law; and therefore there is no particular reason for it, as we think we can ratify and confirm the Convention without putting in this clause. As it stands it protects the man who pirates a work and adds a certain amount of original effort; it is to protect him against anybody pirating the pirated work with his original work in it. I do not like it and never have liked it; I think it is very difficult to defend. I understand it is really covered by the common law, and therefore I propose to leave it out.

Sir RICHARD SOLOMON: It is in the Convention, is it not? The Convention requires it?

The PRESIDENT: Yes, but of course if it is covered by the common law it is not necessary.

Sir RICHARD SOLOMON: I am not so sure that the common law in the self-governing Dominions is the same.

The PRESIDENT: We think it is.

Sir RICHARD SOLOMON: Is it the common law of all the Dominions? You want this Act adopted by the self-governing Dominions. Are you sure that is the common law in the self-governing Dominions? I am not prepared to give an opinion upon it.

Mr. LIDDELL: It would not necessarily apply to South Africa.

Sir H. LLEWELLYN SMITH: Very good legal authorities differ upon this point.

Sir RICHARD SOLOMON: As far as Great Britain is concerned.

Sir H. LLEWELLYN SMITH: Yes.

Mr. LIDDELL: Of course this is one of the remedy clauses which the Dominions would be able to modify or add to.

Sir RICHARD SOLOMON: I am entirely in sympathy with leaving it out altogether.

The PRESIDENT: I think we must have one more meeting at all events, when we can reconsider what we have been considering, particularly with regard to clause 27, and Lord Tennyson will perhaps be able to tell us what his people think about it.

Adjourned to Thursday next, at 11.45 o'clock.

## FIFTH DAY.

Thursday, 16th June 1910.

### PRESENT:

The Right Hon. SYDNEY BUXTON, M.P. (*President of the Board of Trade*),  
President.

Sir H. LLEWELLYN SMITH, K.C.B. }  
G. R. ASKWITH, Esq., C.B., K.C. } (*Representing the Board of Trade*).  
W. TEMPLE FRANKS, Esq. }

H. W. JUST, Esq., C.B., C.M.G. (*Secretary to the Imperial Conference, representing the Colonial Office*).

A. LAW, Esq., C.B. (*representing the Foreign Office*).

F. F. LIDDELL, Esq. (*of the Parliamentary Counsel's Office*).

The Hon. SYDNEY FISHER, accompanied by P. E. RITCHIE, Esq. (*representing the Dominion of Canada*).

The Right Hon. LORD TENNYSON, G.C.M.G. (*representing the Commonwealth of Australia*).

The Hon. W. HALL JONES (*representing the Dominion of New Zealand*).

The Hon. Sir RICHARD SOLOMON, K.C.B., K.C.M.G., K.C.V.O., K.C. (*representing the Union of South Africa*).

Sir THOMAS RALEIGH, K.C.S.I. (*representing the India Office*).

A. B. KEITH, Esq. (*of the Colonial Office*) and }  
T. W. PHILLIPS, Esq. (*of the Board of Trade*) } *Joint Secretaries.*

The PRESIDENT: I think, perhaps, it would be better if we began on what is much the most important point from the Conference point of view, that is, go back to clauses 27, 28, and 29. On clause 27 I do not know if Lord Tennyson has received an answer to his cablegram.

LORD TENNYSON: I have not.

The PRESIDENT: We have been considering the point, I am bound to say, under some pressure in various ways and for various reasons, and I do not think anything



has occurred to us better than the words suggested last time—"Provided that the Act shall not extend to a self-governing Dominion without the legislative or other assent of that Dominion." Sir Richard, I think you have a suggestion to make.

Sir RICHARD SOLOMON: No; you have just shown me a draft of that new clause.

The PRESIDENT: But that affects another point.

Sir RICHARD SOLOMON: It meets my point though; if a self-governing Dominion passes legislation, substantially the same as yours, but makes modifications in the procedure and so forth, then by an Order in Council you can extend the privileges of this Act to that Dominion; I am quite satisfied with that.

The PRESIDENT: It would cover the other point, you think?

Sir RICHARD SOLOMON: It would cover my point, I think.

Sir H. LLEWELLYN SMITH: It is not the same.

Sir RICHARD SOLOMON: It is wider than mine.

Sir H. LLEWELLYN SMITH: This Act would not extend to that Dominion; a substantially similar Act would be in force in that Dominion.

Sir RICHARD SOLOMON: It would give them all the privileges of your Act; that is the great thing.

The PRESIDENT: There are three positions. There is the position of a Dominion accepting the Act *en bloc*, that is to say, by possibly a one-clause Act they adopt the Act as it stands. Then there is the Dominion which stands out altogether. And we have not so far provided for the case, which we hope would be the Canadian case, the third case of legislation, in which the Dominion Act is not absolutely identical but substantially identical with possibly some reservations. I am inclined to think we might as well provide for the first as well, that is to say, that if one of the Dominions desired simply to pass a one-clause Act adopting the Imperial Act as it stands in order to save themselves the time and trouble and the possible alterations in the passing of an Act, I think it would be as well to have that.

Sir H. LLEWELLYN SMITH: We have proposed a form of words.

Sir RICHARD SOLOMON: I do not think any self-governing Dominion is likely to do that, is it—to pass a short Act taking over the Imperial Act as it stands?

The PRESIDENT: What is New Zealand likely to do?

Mr. HALL JONES: I think it is doubtful.

Sir RICHARD SOLOMON: There is no harm in putting it in.

The PRESIDENT: You suggested some words and the Colonial Office have somewhat altered them, and these words are now suggested, to meet that difficulty: "Provided that the Act shall not extend to a self-governing Dominion unless declared by the Legislature of that Dominion to be in force therein, with or without such modifications and additions as relate to procedure and remedies."

Sir RICHARD SOLOMON: That is very much the same as mine.

The PRESIDENT: Practically.

Mr. JUST: The legal phraseology is a little better, I believe.

Sir RICHARD SOLOMON: I should like that. This provides for the first case.

The PRESIDENT: Then the first will read: "this Act" (this is clause 27, subsection 1) "except such of the provisions thereof as are expressly restricted to the United Kingdom shall extend throughout His Majesty's Dominions; provided that the Act shall not extend to a self-governing Dominion unless it is declared by the Legislature of that Dominion to be in force therein." That leaves them the method. What do you think, Mr. Fisher?

Mr. FISHER: I think that is perfectly correct.

The PRESIDENT: Then sub-section (2) comes out; it is now unnecessary, is it not?

Mr. LIDDELL: I think so.

Sir H. LLEWELLYN SMITH: Is it unnecessary?

Mr. LIDDELL: I think so.

Sir H. LLEWELLYN SMITH: But it is an Act with modifications, you see, as to procedure and remedies.

Mr. JUST: Under 29 you are allowed to make modifications.

Mr. LIDDELL: The question would be as to whether they had assented.

The PRESIDENT: I think it is unnecessary. Then as to clause 28, we have been working at a clause to carry out the point to which I alluded just now, namely, the case of a Dominion which is desirous of passing legislation substantially identical, which is not able to accept the Act as a whole, and which does not stand out. You have before you the words of the clause, and we have consulted Mr. Fisher with regard to it, as it affected Canada chiefly. Have you the words?

Mr. FISHER: I have not got those words but the clause was shown to me yesterday.

The PRESIDENT: I will just read it out: "If the Secretary of State certifies by notice published in the 'London Gazette' that any self-governing Dominion has passed legislation substantially identical with this Act, except for the omission of any provisions which are confined to the United Kingdom, or for such modifications as are verbal only, or are necessary to adapt the Act to the circumstances of the Dominion, or relate exclusively to procedure or remedies" (then it is a question whether these next words should come in), "or to the rights of authors resident or works first published within the Dominion, the Dominion shall, whilst such legislation is in force, enjoy all the rights and privileges conferred by this Act as though it were a Dominion to which this Act extends." Mr. Liddell desires me to point out that this is popular language which means, of course, that we can understand what it means, and that he will have to re-draft the last two or three lines into technical legal language. We can take it in discussing it that some drafting alterations are necessary. Mr. Fisher, I think this will meet your wishes.

Mr. FISHER: May I ask whether this is a substitute for the third sub-section of clause 28 or is it an addition?

Mr. LIDDELL: It is an addition to it.

Sir H. LLEWELLYN SMITH: We have got an alternative.

The PRESIDENT: This would be the new sub-section (3) and the other would be sub-section (4).



Sir H. LLEWELLYN SMITH: It ought to follow directly after 27, I think.

The PRESIDENT: I will just read it again and comment on the various points. "If the Secretary of State certifies by notice published in the 'London Gazette:' we think that it should be the Secretary of State in this case; otherwise it would involve an Order in Council, which I think we generally do not desire more than we can help. I think the Colonial Office have a point on that.

Mr. JUST: I certainly understood it was the usual thing to say "if His Majesty in Council is satisfied," but I believe it is thought best to have "the Secretary of State certifies" as an alternative, because under 28 (3) there would be provision for His Majesty in Council to do something similar. I understand the ordinary procedure is to say that His Majesty in Council should be satisfied.

Sir H. LLEWELLYN SMITH: Sub-section (3) of clause 28 will still stand as we drafted it, and there will still always be the power to His Majesty in Council to apply parts of the Act to a Dominion. This clause, which is now being suggested, is confined to one particular case—where the legislation of a Dominion has substantially reproduced this Act—and in that case we wanted to avoid the formality of an Order in Council and to give to that Dominion, as of right, all the privileges of the Act as though they were one to which the Act extends. That was the object of the thing.

Sir RICHARD SOLOMON: I think the Dominions would welcome this.

The PRESIDENT: That is a simpler procedure; Orders in Council are not very popular.

Mr. FISHER: It is a very satisfactory clause.

The PRESIDENT: Then we will accept it; "That any self-governing Dominion has passed legislation, substantially identical with this Act" (that is what exists now) "except for the omission of any provisions which are confined to the United Kingdom" (that is obvious) "or for such modifications as are verbal only or are necessary to adapt the Act to the circumstances of the Dominion." That would be your case, Mr. Fisher?

Mr. FISHER: Yes.

The PRESIDENT: Will those words be satisfactory?

Mr. FISHER: I think those are quite satisfactory.

The PRESIDENT: "Or relate exclusively to procedure or remedies" (that is already provided for in 29—now we have queried the next) "or to the rights of authors resident or works first published within the Dominion." What is the advantage or disadvantage of those words?

Sir H. LLEWELLYN SMITH: Under 29 the Dominions will always have the right to legislate with regard to the authors resident or works first published within the Dominion. The only effect of putting in these words would be that you can do the thing under one Act instead of two, that the same Act which dealt with copyright generally might have supplementary provisions dealing with that. I do not think there is much in it one way or another.

Mr. FISHER: I do not see any possible objection to the words being in.

Sir H. LLEWELLYN SMITH: Unless they created some alarm.

The PRESIDENT: That is the only thing. I do not think there is much advantage in them.

The PRESIDENT: What do you think, Mr. Liddell; is it necessary to have these words in?

Mr. LIDDELL: No, I should let them go out.

Sir H. LLEWELLYN SMITH: It is neater with them out, of course, because they give substantial powers. It will not cut down the powers of the Dominion to do it, but they will do it by a different Act.

The PRESIDENT: That is the point; it would involve separate legislation.

Mr. FISHER: If the words were not in?

The PRESIDENT: Yes. "To the rights of authors resident or works first published." On the other hand, there is some force in what Sir Hubert says, that it might alarm people; it would draw attention to the possibility which probably it would not do otherwise. Do you think we might leave them out?

Mr. HALL JONES: Is it necessary to mention all the exceptions?

The PRESIDENT: I think you must mention all the other exceptions.

Mr. HALL JONES: Supposing it read "pass legislation substantially identical with this Act" and then to go on "then whilst such legislation continues in force." If you start to mention exceptions you may find yourselves in a difficulty.

The PRESIDENT: The only thing is, can you define "substantially identical" unless you give some indication of what you mean?

Mr. HALL JONES: That would be for the Secretary of State to say.

The PRESIDENT: I think you also want the Dominion which is to pass the Bill to be pretty clear as to what they do.

Mr. LIDDELL: You might have entirely different remedies.

The PRESIDENT: I think we ought to have the exceptions, but the only question is whether these should all go in. Shall we leave out that?

LORD TENNYSON: I feel inclined to keep it in.

The PRESIDENT: Why?

LORD TENNYSON: I do not know that I quite understand it; but if it means that a State may under this have their own registration, I think it is rather important to keep it in.

The PRESIDENT: In order that they should be able to include this point in the Act.

LORD TENNYSON: Yes, I think so.

The PRESIDENT: I have no strong view one way or another.

Mr. FISHER: It suggests itself to me that a Dominion might wish to have what I may call a local registration for its own copyright—authors who obtain copyright within its bounds only, of course, and, if so, without that clause I am not quite certain—

Sir H. LLEWELLYN SMITH: They would have to do it by another Act.

Mr. FISHER: I think so.



Sir H. LLEWELLYN SMITH: They could do it.

The PRESIDENT: If they remained in, could we not get some better word than "rights?" "Rights" is the word that rather frightens one; it looks as if you were to take them away.

Sir H. LLEWELLYN SMITH: It is only their own authors.

Mr. LIDDELL: You could have "works the authors whereof are resident."

The PRESIDENT: I think that would be better. It is the word "rights" which rather frightened me.

Mr. LIDDELL: "The authors whereof are resident within the Dominion."

Mr. FISHER: I am not quite sure. I suppose the question of registration would not be included in the word "procedure." "Procedure" means in the case of legal proceedings, does it not?

Mr. LIDDELL: Yes.

The PRESIDENT: If you have the word "works," Mr. Liddell, how would it read?

Mr. LIDDELL: "Or to works the authors whereof are resident or to works first published within the Dominion."

The PRESIDENT: "Whilst such legislation is in force, enjoy all the rights and 'privileges conferred by this Act as though it were a Dominion to which this Act 'extends.' That, I think, as a matter of drafting, should be 27 (2). Shall we go back to 27 (1)?"

Sir H. LLEWELLYN SMITH: 27 (1) is the formal assent and 27 (2) is the virtual assent. Then you come to the question of Dominions which want to differ.

The PRESIDENT: 27 (1) will now read as printed down to "Dominion," and then as now typed. I will read it for the sake of clearness: "Provided that the 'Act shall not extend to a self-governing Dominion unless declared by the 'Legislature of that Dominion to be in force therein with or without such modifications and additions as relate to procedure and remedies.' Of course that to a certain extent is a repetition of 29, but we thought it necessary to repeat it. We will take that as clause 27.

LORD TENNYSON: I do not know that I can agree to that last proviso without asking the Government of the Commonwealth.

The PRESIDENT: Which point do you object to?

LORD TENNYSON: I mean "unless declared by the Legislature of that Dominion." I have not had an answer to my cable.

The PRESIDENT: We shall have to have one more meeting, and perhaps we had better postpone the final decision of that till then. You have telegraphed?

LORD TENNYSON: I telegraphed the moment after the meeting last time.

The PRESIDENT: Shall we do that—accept it formally, subject to bringing it up again at the next meeting after you have heard?

LORD TENNYSON: Certainly.

The PRESIDENT: There is no other point, I think, on these clauses which we have not decided, so perhaps, if you do not mind, while copies of the new 28 (3) are

being re-typed we will go back and proceed with the clauses. Page 4, clause 4, was the one, I think, we had got to. This is "Civil Remedies." I do not know whether anyone has anything to say on that. These might not necessarily be the same in the Dominions. Mr. Liddell, I wish you would just, when I mention the clauses, say which are those which are very likely to be different, which apply to the United Kingdom and which may not exactly apply to the Dominions. It is a question of similitude. Then clauses 5 and 6.

Mr. LIDDELL: Take clause 5 as to the importation; you see it is, "imports into the United Kingdom," and I think it should be "imports into any part of the Dominions to which the Act extends." Clause 5, as it stands, is restricted to importation into the United Kingdom.

The PRESIDENT: That had better cover the whole, had it not?

Mr. LIDDELL: Yes, to any part of the British Dominions to which it applies.

The PRESIDENT: It is an obvious clause. Will you add that? About 4, that is a general one too, is it not?

Mr. LIDDELL: That is a general one.

The PRESIDENT: Then 6.

Mr. LIDDELL: 6 is, of course, a new provision.

The PRESIDENT: This is what is called the innocent infringer.

Mr. LIDDELL: Yes.

Sir H. LLEWELLYN SMITH: There is a point which has been raised on that; I had a talk yesterday with Mr. Fisher, and the point he raised was how far it would be possible to regard the local register which might be set up in a Dominion the Dominion Act as complying with this proviso.

The PRESIDENT: "Provided that if the proper particulars were before the date "of the infringement correctly entered in the register established under this Act, the "defendant shall be deemed to have had means of making himself aware that "copyright subsisted in the work." You mean that if a person living in the United Kingdom is an innocent infringer, or professes to be, whereas this has been registered already in some form in Canada, he ought to have made himself aware of that, and it would be no defence for him to say, "I have not had an opportunity of seeing it."

Sir H. LLEWELLYN SMITH: If it is a Canadian book; that was the point.

Mr. FISHER: Yes.

The PRESIDENT: I think that is only fair; if the Canadian book is actually registered under the Canadian law, I do not think the man ought to have a defence against that.

Mr. FISHER: Wherever there is a register I think that ought to be held.

The PRESIDENT: This clause is really necessary I understand (you will correct me if I am wrong) in consequence of the abolition of formalities generally. It has made it much more difficult for the person who wishes to issue copies of the book, or whatever it may be, to make sure that he is not infringing copyright. One does not want to be unduly onerous on them, but this is a case where the existing formality is gone through, and a very clear one, and I should certainly say that if there is registration in Canada he ought to be protected.

Mr. TEMPLE FRANKS: It is based on one of the provisions of the Patents Act.

The PRESIDENT: Does this proviso meet your point, Mr. Fisher?



Mr. FISHER: I do not think it does as printed.

Sir H. LLEWELLYN SMITH: It would want some words added, and the question would then arise whether it would simply apply to registers established by self-governing Dominions or in any Possession.

The PRESIDENT: I beg your pardon; this only applies to registers established under this Act, which is an Imperial one.

Mr. LIDDELL: Yes.

The PRESIDENT: You want, in addition to that register, to make it a local register.

Mr. FISHER: It has to be read in connection with 18, which provides for a register being kept at Stationers' Hall.

The PRESIDENT: Which, of course, is now purely voluntary.

Mr. FISHER: Yes, and will be voluntary in the future.

The PRESIDENT: I meant in the future.

Mr. FISHER: I understand now, under your law, a registration in Canada of a Canadian book would be accepted in the same way as registration at Stationers' Hall.

Mr. LIDDELL: Yes.

Mr. FISHER: And this rather allows the possibilities of a proof.

The PRESIDENT: Yes, I think so; I think we ought to add that. We will see what wording is suggested.

Sir H. LLEWELLYN SMITH: If we could also provide for the interchange of information—we discussed it a little yesterday—so that a list of new books registered in Canada or Australia could be sent periodically to Stationers' Hall, so that people in London could consult them, it would be a great advantage and not onerous.

The PRESIDENT: That would be hardly a thing for the Act, would it?

Sir H. LLEWELLYN SMITH: I do not think you could impose it upon them.

The PRESIDENT: I think that is a thing rather for negotiation subsequently than for the Bill—not your point, but the point of giving the names.

Mr. FISHER: Yes.

The PRESIDENT: I think it ought to be covered.

Mr. FISHER: I do not think we would have any difficulty in forwarding periodically a list of our registrations to Stationers' Hall. I do not know what the organization of Stationers' Hall here is sufficiently to know whether they could return the compliment and send theirs.

The PRESIDENT: We will bear it in mind; I do not think it is a matter for making it statutory.

Mr. FISHER: That part is not.

The PRESIDENT: As to the other part, we will make an amendment. Now about 7, we just discussed it for a few minutes the other day and, personally, I think I would leave it out if I could. We understand that, as far as Great Britain is concerned, the point is really covered by our common law. This is what is known as

the pirate clause—clause 7. The position is that if a man pirates one book and another pirate pirates from him, the first pirate has protection against the second pirate. He has, it is true, to bring in some original work, but it does not necessarily follow that it is not really piracy. I do not quite see why he should be defended in any way. There may be something to be said for it, and I understand, as far as we are concerned, we are advised (I am bound to say there is some doubt) that the man would have protection under the common law, and I do not want, if I possibly can, to raise an additional thorny question in this connection. You said, Sir Richard, that you could not, off-hand, agree to this.

Sir RICHARD SOLOMON: Leave it out, I could not agree to the principle; but if your common law does not provide for the principle, you ought to put it into your Act so as to comply with the Convention.

The PRESIDENT: We think it does.

Sir RICHARD SOLOMON: I should not say your common law, but the common law of my particular Dominion.

Mr. LIDDELL: Mr. Cutler is strongly of the opinion that it is an entire departure from the existing law.

Sir H. LLEWELLYN SMITH: And he is very much against it.

Mr. LIDDELL: And is very much against it.

Sir H. LLEWELLYN SMITH: Supposing we decide on the merits it ought not to go in, but that the Convention requires it to go in, then we must make a reservation. It is one of the things we are entitled to make a reservation about if it is worth while. I mean we are entitled, as of right, to make a reservation.

The PRESIDENT: Personally I still think we ought not to have it in. I disapprove of the principle.

Sir RICHARD SOLOMON: I think we ought to leave it out.

The PRESIDENT: Is that agreed?

Sir H. LLEWELLYN SMITH: And then we will consider whether a reservation is wanted or not.

The PRESIDENT: No. 8 is the copyright in a work of architecture. The first subsection is that if a person is proved to have infringed copyright he cannot be made to have his building pulled down, naturally; and a penalty must be imposed in some other way. In the case of books you destroy them, but in the case of a building you cannot pull it down. That is really the point, is it not?

Mr. LIDDELL: Yes.

Mr. LAW: But suppose it is only built up to a very slight extent so that it could be converted.

Mr. LIDDELL: To what extent? Where are you to draw the line?

The PRESIDENT: It would be a little hard to say at that stage that copyright had been infringed.

Mr. LAW: It might be just infringed.

Mr. LIDDELL: Where are you to draw your line? It is impossible to draw any line.



Mr. LAW : It should become impossible for the work to proceed, and the building could be altered or removed at a less cost than any damages that are likely to be granted.

Mr. LIDDELL : You warn the man that if he goes on building you will come down on him for heavy damages.

The PRESIDENT : I think it would be difficult, because, while the architect is the infringer, the person interested in the building is some wholly innocent person. "Summary Remedies."

Sir H. LLEWELLYN SMITH : Those would apply solely to the United Kingdom.

The PRESIDENT : Which part ?

Mr. LIDDELL : 10 to 15.

Sir H. LLEWELLYN SMITH : We might run through them because they may act as models for other laws if they are accepted.

The PRESIDENT : Those clauses to which I am referring, the summary remedies, as far as they go, only apply to our local legislation here. Would you like us just to go through them to see what they are like, because we are quite willing to alter them if necessary ?

Mr. FISHER : Yes.

The PRESIDENT : Perhaps we had better just very quickly go through them. Clause 10 : "Penalties for dealing with pirated copies." That is very simple. "A fine of 5*l.* imposed for every copy dealt with in contravention of this section, but "not exceeding 50*l.* in respect of the same transaction." That is where they make the sale ; they sell, or they distribute, or they import or exhibit. That pretty well covers those offences. What is this one in brackets, Mr. Liddell ?

Mr. LIDDELL : That prevents you inflicting any penalty for a first offence unless the works are improperly marked with the name of a publisher or printer.

The PRESIDENT : We agreed to that, did we not ?

Mr. LIDDELL : Yes.

Sir H. LLEWELLYN SMITH : It is no good for artistic purposes, where there is no printer or publisher.

Mr. LIDDELL : No.

Sir LLEWELLYN SMITH : Therefore, there is a lacuna in it.

Mr. LIDDELL : An ordinary engraving has the name of the printer or publisher on it.

The PRESIDENT : Still it is some protection.

Sir H. LLEWELLYN SMITH : I think it is worth while.

The PRESIDENT : No. 11 is "Search Warrant." This is very stiff as far as we are concerned, but it is put in because when we had a musical copyright Act up a few years ago, these clauses 11, 12, and 13 were put in. I do not know that they affect you in the Dominions, but they are very stiff.

Mr. ASKWITH : Should they be confined to music ? It is : "copyright in any musical work," and that only.

The PRESIDENT : The reason was because they were rather stiff, and they were put in, I understood, under some parliamentary agreement in the House.

Mr. LIDDELL : It was only proposed with regard to musical works ; because the only mischief which required to be met at the time the Act was passed was the pirating of musical works.

Sir H. LLEWELLYN SMITH : And the man who directed all that piracy of musical works, being driven out of that business by this Act, is now beginning to pirate literary works.

Mr. LIDDELL : So it is said.

The PRESIDENT : Was there great opposition to these clauses when they passed ?

Mr. TEMPLE FRANKS : Very great.

Mr. LIDDELL : From a very small clique.

The PRESIDENT : We will consider that.

Sir H. LLEWELLYN SMITH : We give power to arrest without a warrant, and various things.

The PRESIDENT : It is rather stiff.

Sir H. LLEWELLYN SMITH : There is absolutely no logical defence for confining it to musical works. There is a great deal to be said for confining it to registered works, but it may be difficult to reconcile that with the Convention.

LORD TENNYSON : But is it confined to musical works ?

The PRESIDENT : Yes, for this reason, that when the Copyright Act was introduced and passed three or four years ago these very stiff clauses applied to this, because music was very much hawked about by hawkers, and they were only at that time dealing with musical works. These search-warrant clauses being very stiff were very much opposed then, and I am afraid that if we extend them to other things they might again be opposed.

LORD TENNYSON : I know that my father's "Crossing the Bar" was pirated by hawkers by the thousand.

The PRESIDENT : Do you mean in the musical setting ?

LORD TENNYSON : No, but you said it only applied to music ; why should it not apply to literary things as well ?

The PRESIDENT : That is the suggestion.

LORD TENNYSON : I think it ought to.

The PRESIDENT : I think it might ; at all events we will consider it. I think we should try it on if we can get it through. We may have to drop it. I do not see how you can properly distinguish between musical works and others, as it is suggested that the man who dealt in the one class has now gone in for the other. Now we come back to clause 16, which affects the Dominions as well as ourselves—"Importation."

Mr. ASKWITH : The same thing would occur under 12.

Mr. LIDDELL : And 13.



The PRESIDENT: Yes, 12 and 13. Clause 16, "Importation of Pirated Copies." Is this the existing law?

Sir H. LLEWELLYN SMITH: Yes. There is a point that was raised by Mr. Fisher as to whether we cannot make drafting alterations in 16 which will give corresponding powers to the self-governing Dominions. This, you see, is a United Kingdom clause.

Mr. LIDDELL: All British Possessions?

The PRESIDENT: I do not see why it should not; it is a very simple way of prohibition.

Mr. FISHER: We have at the present time a Canadian law embodying this principle, and I think we would like to continue that law. My only object in making the suggestion that it should be embodied in this Act is that I want to decrease the possibility as much as possible of our making provisions which are not in the Imperial Act. I would like to have our Act as nearly as possible identical.

The PRESIDENT: Of course this applies to the Customs, Excise, &c.

Sir H. LLEWELLYN SMITH: If you look at clause 30 you will find we have struck out 30 altogether, and, therefore, the provision is gone.

Mr. JUST: In Canada do they stop the books at the Customs, not only those registered in Canada, but those coming from outside?

Mr. FISHER: I beg your pardon.

Mr. JUST: The Customs ought to stop not only books registered in Canada, but others coming in that are pirated copies.

Mr. FISHER: Any pirated copies?

Mr. LIDDELL: Not only pirated copies either—any copies.

Mr. FISHER: That is, where a contract exists. Where a contract does not exist then the Customs ought to prevent pirated copies coming in only.

The PRESIDENT: I do not see why we should not extend the principle of clause 16 to the Dominions. Of course the procedure would be different, but it is already provided for under clause 30.

Mr. LIDDELL: In the first opening paragraph of 30.

Sir H. LLEWELLYN SMITH: You might take out the first paragraph of 30 and bring it into 16.

The PRESIDENT: I think that would be the best thing to do. "Delivery of books to libraries."

Sir H. LLEWELLYN SMITH: That is obviously the United Kingdom.

The PRESIDENT: You do not have to do that, Mr. Fisher?

Mr. FISHER: We do it to our own Parliamentary Library:

The PRESIDENT: "Registration." That is probably as far as the Dominions are concerned; this does not affect them. It is voluntary here and we might see how far by agreement subsequently we could make it reciprocal.

Sir H. LLEWELLYN SMITH: We are going to alter that division between two kinds of registers here; that might not be convenient.

The PRESIDENT: I am not delaying on the clause 19, "Collective Works"—is that the existing law? "The existing law is, shortly, that if one person has employed another to compose a book"—

Lord TENNYSON: Am I to understand there is no penalty for non-registration?

Mr. LIDDELL: There is no penalty for non-registration.

The PRESIDENT: No, it is voluntary. "The existing law is, shortly, that if one person has employed another to compose a book or a part of an encyclopædia, "periodical, or newspaper (1) on the terms expressed or implied that the copyright belongs to the employer, and (2) for payment actually made, the copyright in the work as published belongs to the employer for the full term, but the author may after 28 years reproduce that part of the work in a separate form, while the employer cannot, while the copyright subsists, publish it in a separate form." What alteration are you making in that?

Mr. LIDDELL: It is radically different.

The PRESIDENT: "When the work of an author is first published as an article or other contribution in a collective work (that is to say):—(a) an encyclopædia, dictionary, year book, or similar work; (b) a newspaper," and so on, "then subject to any agreement to the contrary, the author shall retain his copyright in his article or contribution, but the proprietor of the collective work shall at all times have the right of reproducing and authorising the reproduction of the work as whole." You have turned it round.

Mr. LIDDELL: The owner of an encyclopædia can reproduce the encyclopædia at any time for all time, but for 50 years he would have the sole right of publishing the encyclopædia. Concurrently the author of each article in the encyclopædia will have the copyright of his own article, that is to say, apart from agreement, of course, he can publish the article by itself.

Sir LLEWELLYN SMITH: At once.

Mr. LIDDELL: And can restrain anyone else from publishing the article by itself, even the owner of the encyclopædia.

Sir H. LLEWELLYN SMITH: Is that the Convention?

Mr. LIDDELL: No, the recommendation of Lord Gorell's Committee.

The PRESIDENT: There are two copyrights running side by side.

Mr. LIDDELL: Yes, and the owner of the encyclopædia can restrain the publication of any article by anyone else except the author of the article.

The PRESIDENT: At present the author loses his copyright for the first 28 years; he cannot do anything with it in the first 28 years, but under this he can do it the next day.

Mr. LIDDELL: Apart from agreement.

The PRESIDENT: I think this is fair.

Mr. FISHER: Unless there is an agreement.

Mr. LIDDELL: Yes, and, of course, there would always be an agreement.

LORD TENNYSON: I think that is all right.



Mr. LIDDELL: That is subject to this modification, that if the article were produced to order, were written to order, the copyright would pass under clause 3 to the person who gave the order. Therefore, the author in that case would have no right in it, and could not publish it at all.

The PRESIDENT: I suppose in most of those cases that would be so.

Mr. LIDDELL: It would be so in most cases. But for many of the magazines you do not write an article to order, but you send in the article and the publisher says whether he will put it in or not.

LORD TENNYSON: In that case the author is going to have a life and 50 years? Those  $\alpha$  years mean 50.

Mr. LIDDELL:  $\alpha$  means 50 if 50 years is the period decided upon.

The PRESIDENT: Clause 20, this is the newspaper clause: "Notwithstanding anything in this Act, an article, not being a tale or serial story, first published in a newspaper may be reproduced in another newspaper if notice expressly forbidding reproduction is not published in some conspicuous part of the newspaper in which it is so first published, and the source from which it is taken is acknowledged." I cannot remember for the moment how it stands now. In an ordinary book they get full copyright?

Mr. LIDDELL: Yes.

The PRESIDENT: This is an extension as against the newspapers?

Mr. LIDDELL: Yes.

Sir H. LLEWELLYN SMITH: This is the Convention so far as International Copyright goes.

The PRESIDENT: But the Convention went further than this, did it not: "The protection of the present Convention shall not apply to news of the day or to miscellaneous information which is simply of the nature of items of news." Of course, that is so.

Mr. LIDDELL: We leave that as it is; the Convention does not impose any obligation on the parties to the Convention to make any provision with regard to news.

The PRESIDENT: And there are none at present. That is the "Times" case we have had.

Mr. LIDDELL: There is no copyright in news itself; there is in the form in which the news is conveyed.

The PRESIDENT: Clause 20 is necessary to comply with the Convention.

Sir H. LLEWELLYN SMITH: It is only for the international dealings. We could, if we chose, have a different clause for domestic.

Mr. ASKWITH: I think you might leave the newspapers to bring up any amendments in their favour; they are quite strong enough to do so.

The PRESIDENT: Clause 21: "Provisions as to Photographs." "The person who superintends and directs the taking of a photograph."

Sir H. LLEWELLYN SMITH: We must have the author.

The PRESIDENT: Is that the gentleman who takes the cap off?

Mr. LIDDELL: Not if he did not arrange the photograph and superintend it—if someone else superintended it.

The PRESIDENT: Who superintends? Is it the man who puts his head under the cloth?

Mr. LIDDELL: He is generally the person who superintends.

The PRESIDENT: Can you not get something better than "superintends and directs"?

Mr. LIDDELL: This is Lord Gorell, I think.

Mr. TEMPLE FRANKS: Surely it is the person who owns the plant in most cases. In the case of an ordinary photograph the man you want to give it to is the photographer.

Mr. LIDDELL: It will belong to him.

The PRESIDENT: It is a small point and we will look at this again in Committee. Clause 22: "Provisions as to Designs." What is the point of that? Does that affect us here only?

Mr. LIDDELL: I think it would affect the Colonies too.

The PRESIDENT: I should have thought our Acts were quite separate from theirs.

Sir H. LLEWELLYN SMITH: They could adapt them to local circumstances, but this is not one of the clauses confined to the United Kingdom.

The PRESIDENT: It is only confined to the United Kingdom inasmuch as this refers to the Patents and Designs Act, 1907.

Mr. LIDDELL: It is a question whether a design is capable of being registered under that Act. The design may be a Canadian design and so far as copyright in this country is concerned you would say: is this capable of being registered under the Act of 1907?

The PRESIDENT: Mr. Fisher, have you any views on 22?

Mr. TEMPLE FRANKS: In one sense it is purely domestic. It affects the Colonies only to the extent that colonial designs will have to submit to the provisions of the Patents and Designs Act, 1907, as they always have done. There is no alteration.

Sir H. LLEWELLYN SMITH: In adapting the Act to the circumstances of the Dominion they would naturally put a corresponding clause here, you see.

Mr. TEMPLE FRANKS: I suppose if they choose to enlarge the copyright relating to designs in their own country it will not matter to us.

Mr. LIDDELL: I do not think it would be a substantially identical Dominion Act, if it did.

Mr. TEMPLE FRANKS: It would be larger, but that surely would not be a consideration. If they gave a larger copyright you would certainly not refuse the advantages of this Act to them.



Mr. LIDDELL: I am not at all certain.

The PRESIDENT: I think we might look at that again; I do not know.

Sir H. LLEWELLYN SMITH: We had better see how far we are substantially identical; I think the Canadian law is.

The PRESIDENT: It seems to me much more local.

Clause 23 is important. Lord Tennyson, I think you raised a point with reference to it. That is the question of the existing rights. Assuming that the term is increased for the authors, is the benefit to go to the author, or is it to go to the person who may have purchased the copyright; and also in the case of persons not anticipating the extension of the length of time who may already have spent some money and time in reproducing the work, what is to be their position with regard to it? You have the legitimate position of the man who, not knowing that the copyright was to be extended, had made preparations for republication of the book, or what not, at the end of the existing copyright term, who may have been put to some considerable expense, how far would he have a claim? Then there is the other point which we discussed a little the other day and which I think you raised, how far the extended time should go—should it go specifically and solely to the author supposing he has parted with his copyright, or shall it go to the person who has purchased the copyright without any knowledge of these extended terms, and how are you to deal between the author and the publisher, for instance, in that case? In the case of an author who has parted with his copyright now receiving a few more years, on receiving these years, how is he to be brought into proper financial relations with the publisher? It is not an easy point; that is not provided for in subsection 2.

LORD TENNYSON: Will you now ask me the questions separately?

The PRESIDENT: It does not matter which order we take them in. In subsection 2 of 23 the proviso that we have got is not altogether satisfactory: "Where by virtue of this section the term of any right in any work is extended, the benefit of the extension shall, in the absence of any express agreement to the contrary, be vested in the author of the work;" that is to say, supposing 20 years were added, that 20 years would go to the author, or to his heirs, and though he may have parted with his copyright in the years which he was entitled to deal with under the existing law. That is the position: "Provided that if the author had before the commencement of this Act assigned the right for the full term thereof to any other person" (that is his whole existing copyright) "that person or the person on whom the right may have devolved or to whom it may have been assigned by the author, shall be entitled to acquire from the author the benefit of the extension conferred by this section, so far as it relates to such right on such terms as, failing agreement, may be determined by arbitration;" the point of that being, as I understand it, that there is this 20 years, and the publisher has bought, thinking he had the full right of dealing with the particular book in any way he chose; he suddenly finds that the author has 20 years more of copyright over which he has no control, and that therefore, for instance, very near the end of the copyright he proposes, as a publisher often does, to produce a complete cheap edition in order not to keep the copyright, but to keep the sale in his own hands, and he finds himself not in a position to do so; what is to happen in that case? On the other hand, if the author must part with his copyright to the publisher, of course it puts him in a very difficult position for bargaining and the only way we could suggest was that in such an event, if they could not come to an agreement, there should be some means of arbitration.

LORD TENNYSON: I think that is quite fair.

The PRESIDENT: It might be a very awkward position. What is the suggestion as to arbitration, Mr. Liddell?

Mr. LIDDELL: They agree on an arbitrator, and if they cannot agree they go to the court to appoint one.

The PRESIDENT: You used the word simply "By arbitration"; what would that legally mean?

Sir H. LLEWELLYN SMITH: Under the Arbitration Act of 1889.

The PRESIDENT: Should it not be mentioned?

Mr. LIDDELL: It applies automatically without mentioning it, except in Scotland.

LORD TENNYSON: I quite agree that the author should have the benefit of the last 20 years, or more likely much less, whatever it may be.

Mr. LIDDELL: There is a question that Mr. Cutler has raised. The publisher who has bought the copyright has the sole right of publishing during the term of the copyright, but after the term of copyright is expired he has the right of publishing; he has not the sole right but he can go on publishing. Unless he buys under an arbitration under this clause the author can prevent him at the end of his term publishing at all.

Sir H. LLEWELLYN SMITH: That is so.

Mr. LIDDELL: Should he not have the right to go on publishing?

LORD TENNYSON: Supposing the publisher does not agree to what the arbitrator says, then the author can take it to someone else.

Mr. LIDDELL: Yes, and could prevent his publisher, to whom he sold his copyright, publishing at all.

The PRESIDENT: I think that is fair enough, because that is a question of price to be decided by the arbitrator, but obviously if the publisher is able to continue publication he would not give the author anything.

Mr. LIDDELL: If he wants to have the sole right of publication; that is to say, if he wants to prevent competition, he would have to give the author something.

The PRESIDENT: The author has the copyright, and I understood you to say that the question is, assuming the publisher has bought the copyright up to 1900, whether in 1901 or as soon as the copyright expires he should be able to continue publishing or not. If he was able to do that, of course he would not give the author anything.

Mr. LIDDELL: Yes, he knows that everyone else would have the right of publishing too; the author could give the right to anyone else, so that the publisher would not have the sole right of publishing. It is worth his while to prevent the author allowing anyone else to compete with him.

The PRESIDENT: But it very much diminishes the value of the author's 20 years.

Mr. LIDDELL: Otherwise you are taking away the right which the publisher would enjoy under the present law.

Mr. TEMPLE FRANKS: And had the right to expect.

Mr. LIDDELL: Yes.

Mr. TEMPLE FRANKS: He may have accumulated a large number of copies of an edition which he may find perfectly useless on his hands.



Sir H. LLEWELLYN SMITH: So would a great many other publishers have a similar liability.

Mr. TEMPLE FRANKS: They would, but they would not have prepared an edition; the publisher who bought the copyright would know when it was expiring and would probably make his plans to have an edition in hand at once.

The PRESIDENT: And that is what he would have to be compensated for.

Sir H. LLEWELLYN SMITH: They might be lying in wait for the copyright to expire, and make all their preparations.

LORD TENNYSON: You cannot help that.

The PRESIDENT: Mr. Liddell, do you think this, as it stands, is a little hard on the publisher?

Mr. LIDDELL: Yes.

LORD TENNYSON: How do you want to have it?

Mr. LIDDELL: I am talking about the publisher as meaning the man who has bought a copyright, and I think he should have the right to continue to publish, not the sole right, but the right to continue to publish.

Mr. TEMPLE FRANKS: On terms.

Mr. LIDDELL: Not on terms at all.

LORD TENNYSON: He must pay.

Mr. TEMPLE FRANKS: He must pay now.

LORD TENNYSON: I do not think that such a monopoly will do at all.

Mr. FISHER: Do you propose that he should have the full right to publish without compensation to the author?

Mr. LIDDELL: Without any compensation at all.

LORD TENNYSON: I do not think that would do at all.

Sir RICHARD SOLOMON: The copyright would be of no use to the author.

The PRESIDENT: You do not quite appreciate it, but that would knock away the value of the copyright to the author altogether.

Mr. LIDDELL: The publisher would no longer have the monopoly.

The PRESIDENT: But in the ordinary course the copyright is not extended, and in the ordinary course the publisher has the pull that he probably publishes an edition just before the copyright falls out and that, no doubt, is of advantage to him. The other people begin issuing editions, which they issue cheaply; but if this publisher is not to pay anything more no other persons could give the author much because the only way they could compete with them would be to get the books for nothing. They will not be able to compete with the publisher because, under your suggestion, he has his books for nothing and, therefore, the value of the copyright will have disappeared.

Mr. ASKWITH: Then you would be giving the publisher the right to a monopoly without any payment at all.

Mr. LIDDELL: I take away the monopoly.

The PRESIDENT: Yes, but you are giving him the advantage of getting the advantage for nothing, whereas the other publisher will have to pay something, and therefore you do give him a monopoly.

Mr. LIDDELL: You are only preserving his existing right at the present moment.

The PRESIDENT: That will be taken into account in the negotiations before the arbitrator.

Mr. ASKWITH: There will be two or three big cases of arbitration, and then the general principles of the kind of reward that is to be paid would be settled.

The PRESIDENT: In that view, if you put this in as the basis for arbitration you will knock the author out altogether.

Mr. LIDDELL: Take the case of Novello, one of the musical publishers, who publishes a book of tunes or hymns by different authors, the copyright in each hymn running out at a different time, what is he to do—the copyright of each particular tune being practically valueless, that is to say, not worth a big arbitration.

Mr. ASKWITH: I think there will be one or two arbitrations as I have said which, with a really sensible arbitrator, would result in the owner of the hymn who stopped Novello from publishing the large book of hymns, and arbitrarily held up one hymn, being found entitled to nothing at all, or, at the most, a farthing damages. I think you may leave it to the common sense of the arbitrator.

The PRESIDENT: I see your point; you think this clause is rather hard on the publisher, and that he may be opposed to it; I think it ought to be a clause by agreement.

Mr. TEMPLE FRANKS: It should be made perfectly clear that he should be entitled to go on publishing. I do not know whether the clause does quite make that out.

Mr. LIDDELL: It does not.

The PRESIDENT: That is Mr. Liddell's point; and then you give him the full right to go on publishing under any circumstances, whether he comes to an agreement or not.

Mr. TEMPLE FRANKS: I think certainly there would have to be terms, but he ought to be given the right to continue to publish anyhow.

The PRESIDENT: It says he is to be entitled to acquire. That does imply it.

Mr. FISHER: Does that give him the prior right when anybody else may acquire the right too?

Mr. TEMPLE FRANKS: There is a right of pre-emption.

The PRESIDENT: He is entitled to acquire. That gives him the first claim, I think.

Mr. ASKWITH: On agreement, and if he cannot agree he is entitled to go to the arbitrator.



Sir H. LLEWELLYN SMITH: I think the only thing this gives, as it is drawn, is the right to acquire a monopoly or nothing.

Mr. LIDDELL: Or nothing.

Sir H. LLEWELLYN SMITH: The case is raised here that he may wish not to acquire the monopoly but to acquire the concurrent right of publication on paying a royalty. Is not that so?

Mr. LIDDELL: Yes.

Sir H. LLEWELLYN SMITH: This does not give it as drawn; if it is desired to do it you must alter the clause.

The PRESIDENT: There is no objection to that, because there is no reason for his acquiring the copyright as such if he comes to an agreement with the author before publication. The author might desire to keep the copyright, and it is a question of the terms. I see no objection to that, Lord Tennyson.

LORD TENNYSON: No.

The PRESIDENT: It does not matter whether it is actually the acquisition of the copyright or a royalty, and so on, as long as it is fair between the two. Perhaps you will think of some words.

Mr. TEMPLE FRANKS: It is really that he should be entitled to continue publication on paying such royalty as may be agreed or be fixed by arbitration.

The PRESIDENT: On such terms. There is the other provision 23 (1) (b), which I understand is this: a copyright was just about to fall in under the existing state of things and somebody, the publisher or whoever it might be, had gone to some expense in preparing for the reproduction of the engravings, or whatever it is. The Act then extends the copyright, and therefore what he has done in regard to printing or designing or reproduction, or whatever it is, is valueless; and the point is how far he should be able to claim back upon that, having done it perfectly *bonâ fide* and innocently and perfectly properly in the way of trade. Mr. Liddell, how are you going to define the respective rights in that case? Who is to decide it?

Mr. LIDDELL: The court must.

The PRESIDENT: The object of the clause is what I have described, is it not?

Mr. LIDDELL: Yes.

The PRESIDENT: I do not quite see how it is going to be decided.

Mr. ASKWITH: The principle would be decided by the court I should think, and the court would order an account to be taken or in a complicated case of figures would send it to the official referee or to a master.

The PRESIDENT: Supposing they have gone so far, for instance, as to print a book so as to put them to considerable expense, are they to be allowed to obtain back their money by publication, or is the author or publisher to meet the legitimate expenses to which they have been put? It is not clear.

LORD TENNYSON: That would open the door to any amount of fraud.

The PRESIDENT: It might be very hard on the other man. It is a perfectly legitimate transaction. Somebody this year may have been put to a considerable

expense with a view to publishing or reproducing an engraving or anything of that sort.

Mr. ASKWITH: It would be comparatively ephemeral because it would be what was only done before some date a very short time ahead.

The PRESIDENT: What I do not see from this clause is how he is going to obtain his remedy.

Mr. LIDDELL: He ought to be allowed to go on doing the thing he was intending to do unless he was repaid his expenditure by the author or the person entitled to the copyright.

Mr. TEMPLE FRANKS: I am not sure that the clause gives that.

The PRESIDENT: I do not think it does, and that is why I asked. I think the intention is clear. You might look at that.

Mr. TEMPLE FRANKS: It does not define his rights.

The PRESIDENT: There must be an option on the part of the author either to reimburse him the legitimate expenditure which would be decided if they could not come to an agreement, by a court of law which he had incurred, or allow him to continue to do what he was going to do.

Mr. LIDDELL: Yes.

The PRESIDENT: I think that is right.

Mr. TEMPLE FRANKS: Or take over his stock at a valuation.

The PRESIDENT: Subsection (c) is "Records." There is nothing in that, is there?

Mr. LIDDELL: Yes.

The PRESIDENT: What is the point of this? This is bringing records which are new on to the same basis as the others.

Mr. LIDDELL: It is throwing open to the record-makers all music of which records have now been made.

The PRESIDENT: You mean that wherever there has been a record made up to now if the work has been reproduced it is liable to be reproduced—in fact, they cannot keep copyright in it.

Mr. LIDDELL: There is no copyright as far as records are concerned.

The PRESIDENT: Is that right?

Mr. LIDDELL: That is the recommendation of Lord Gorell's Committee.

Mr. ASKWITH: It is a very wide gift as drafted because it gives to the people producing records or other contrivances a right over existing musical works for which they pay nothing at all.

Mr. LIDDELL: Yes.

The PRESIDENT: Gives to whom?

Mr. ASKWITH: It gives to persons making records or other contrivances a right over existing musical works whether they have paid or have not paid.



The PRESIDENT: I do not quite see the justice of that. Why should a person be given that right because a piece of music has already had a record made of it? You mean because otherwise it would give a monopoly.

Sir H. LLEWELLYN SMITH: There is no protection at present; it is given a new protection, and this only applies at the commencement of the Act.

The PRESIDENT: Has anybody any views on that? What do you think, Sir Richard?

Sir RICHARD SOLOMON: I have no views on musical records; I do not understand them.

LORD TENNYSON: What does "literary or musical works" mean? Does that mean speeches being spoken into a machine?

Mr. LAW: Or a song? It is literary.

Mr. FISHER: Is there not a danger here that if some provision is not made against it the moment this Act is introduced and before it becomes law record-makers will go to work and make records by the hundreds, as they foresee that restrictions are to be introduced? Should there not be some clause to the effect that only such records as were started before the introduction of this Bill should have this protection?

Mr. LIDDELL: Yes.

The PRESIDENT: This clause, as far as it goes, is a protection against that; it prevents these particular records becoming a monopoly. Is what you suggest a thing which is done, Mr. Fisher?

Mr. ASKWITH: I understand that in Germany they fixed a date prior to the introduction of the Bill—took an arbitrary date and said, "Before the 1st May 1909" so as to prevent the storing of records.

Mr. FISHER: We have done that in some legislation in Canada where a similar danger existed.

Sir H. LLEWELLYN SMITH: You could never carry a date before the introduction, because that is retrospective.

The PRESIDENT: We might look into that point.

Mr. FISHER: I do not know what the practice is in your legislation.

The PRESIDENT: The practice is nearly always to make it the date of the commencement of the Act.

Mr. LAW: Could not you carry it back to the date of the Convention—or better, the date fixed for the exchange of the ratifications of the Convention?

Sir H. LLEWELLYN SMITH: We frequently go back to the date of the introduction of the Bill, but never further because that is retrospective.

The PRESIDENT: I think (c) might go back to the introduction of the Bill.

Mr. LIDDELL: I do not see why you should not make (c) go back to the date of the report of Lord Gorell's Committee.

Mr. FISHER: If you fixed the introduction of the Bill, it would probably be sufficient because it is not known until the Bill comes in what the Bill will be, although they may have a shrewd suspicion.

The PRESIDENT: I think we must take the date of the introduction of the Bill; that I can put in.

LORD TENNYSON: I suggest that ought to be in the last clause we have been discussing, too.

The PRESIDENT: It is; those blanks are intended to be filled in in that way. Then we have done sub-section (2). "Miscellaneous": Is there anything in that?

Mr. LIDDELL: Clause 24 is going out.

The PRESIDENT: Clause 24 is the existing law.

Mr. LIDDELL: No, it is not the existing law; you decided to leave it out. It appeared in Lord Herschell's Bill in 1893 and let the artists move it if they want it. It was not in Lord Monkswell's Bill, only in Lord Herschell's.

The PRESIDENT: I should have thought this was rather a good clause to go in, showing we are not making a sort of monopoly in these matters. I am rather inclined to leave it in.

Mr. TEMPLE FRANKS: It limits him by the last clause: "Provided that he does not thereby repeat or imitate the main design of the work." It stops him making anything like a replica.

The PRESIDENT: I am inclined to leave it in.

Sir H. LLEWELLYN SMITH: If he has parted with the copyright he has no right to make a replica.

Mr. TEMPLE FRANKS: Probably he has a replica in his studio.

Sir H. LLEWELLYN SMITH: He is the author of the artistic work, but not the proprietor of the copyright; he has sold it.

Mr. TEMPLE FRANKS: He has a study which is a highly-finished work; may he sell the study which is a highly-finished work which happens to be in his studio? You prevent him doing that here.

The PRESIDENT: I should have thought that in the case of casts and things of that kind he could use them all over again, not necessarily repeating the same thing, but with alterations and so on. He would use them for educational purposes. I think we ought to have this in. I think the copyright is preserved sufficiently.

Mr. LIDDELL: Yes.

Sir H. LLEWELLYN SMITH: I think this is not its proper place in the Bill.

Mr. ASKWITH: It is rather a grand place for it to be put in as the only miscellaneous matter.

The PRESIDENT: It makes too much of it.

Sir H. LLEWELLYN SMITH: It should come on page 2. "Copyright shall not be infringed."

The PRESIDENT: "Application to Scotland."



Mr. JUST: There is Clause 25.

The PRESIDENT: I beg your pardon, Clause 25. "Abrogation of common law rights." What does that mean?

Mr. JUST: It should not apply to Australia as it stands; it is too wide, because the Australian Copyright Act of 1905 saves the rights under State laws, and, therefore, I think Lord Tennyson would agree that we should have to let the State Governments know about the Bill, and any necessary saving of State rights would, I think, have to be arranged between the Commonwealth Government and the State Governments.

LORD TENNYSON: That is quite right.

Mr. JUST: Because in the definition at the end, on page 20, we have defined self-governing Dominion so as to exclude the State Governments.

Sir RICHARD SOLOMON: Do you mean they have different Copyright Laws in the different States?

Mr. JUST: The States legislation was really abrogated by the 1905 Commonwealth Act, but that Act saved the rights under the States laws, and therefore we must take care that is not infringed.

Sir H. LLEWELLYN SMITH: Will this clause stand as it is, Mr. Liddell? You must add, "This Act or any Act." This knocks out all the Dominion legislation absolutely, as drafted.

Mr. LIDDELL: Clearly, if they adopted it.

Sir H. LLEWELLYN SMITH: It is intended only to bar common law copyright.

Mr. FISHER: Is this retroactive?

Sir H. LLEWELLYN SMITH: "No person shall be entitled otherwise than under and in accordance with the provisions of this Act."

Mr. TEMPLE FRANKS: It should be "hereafter."

Mr. FISHER: I think you would have to put the word "hereafter" in.

Mr. TEMPLE FRANKS: Of course, the common law copyright does not go very far.

Mr. LIDDELL: This is to be retroactive, certainly.

Sir H. LLEWELLYN SMITH: It will have to be re-drafted.

Mr. LIDDELL: It requires re-drafting.

Mr. FISHER: This would have to be re-drafted; it would not destroy the rights acquired under the former Copyright Act, would it?

Mr. LIDDELL: Clause 23 is intended to cover common law rights as well as statutory rights.

Mr. FISHER: This is not intended to do away with the rights acquired under existing and former copyright laws.

Mr. LIDDELL: Not this clause; this is simply intended to say that so far as the United Kingdom is concerned you shall not claim outside this Act at all; you shall not say you have got a common law right.

Mr. FISHER: I understand that, that is quite right, but does not this go farther than that?

Mr. LIDDELL: It is not intended to go further, but this clause does want reconsideration.

The PRESIDENT: You must somehow restore the Dominions.

Mr. LIDDELL: We meant to save the provisions of any statute.

The PRESIDENT: This was, of course, only intended to apply to our own local legislation; it must be drawn so as to make that quite clear.

Mr. FISHER: I am not quite sure how far that goes.

The PRESIDENT: Would you like us to have an alternative clause drawn and to consider it the next time?

Mr. FISHER: I think it would be safer to.

The PRESIDENT: We will do that.

LORD TENNYSON: This does not save the existing copyright; it cuts out all the existing copyright.

Sir H. LLEWELLYN SMITH: Certainly.

The PRESIDENT: It has gone a little too far.

Mr. LAW: There was one point here—I am only asking for information—clause 7 was to be taken out because the remedy was really provided under the common law, and if the common law is to be taken out by clause 25 does not the right which exists at present, and which purports to be provided for by clause 7, disappear?

Mr. LIDDELL: That is only a question of procedure.

Mr. LAW: That is what I wanted to know.

Mr. LIDDELL: We are not changing the common law procedure or the common law remedies.

The PRESIDENT: I think you have a typed copy of clause 28, subsection (3), which some members of the Conference were unable entirely to appreciate. We have now drafted it in what I think is clearer language, and I will just read it and see if you agree with it: "Where His Majesty in Council is satisfied that the law of a self-governing Dominion which has not declared this Act to be in force" (that is adopting the words of subsection 27 (1)) "provides adequate protection."

Mr. LIDDELL: Of course you will now have to add "and which has not passed substantially identical legislation."

The PRESIDENT: That is what we agreed as the proviso to subsection (1) of clause 27: "Provided that the Act shall not extend to a self-governing Dominion unless declared by the Legislature of that Dominion to be in force therein with or without such modifications and additions as relate to procedure and remedies"—"Where His Majesty in Council is satisfied that the law of a self-governing Dominion which has not declared this Act to be in force" (we do not want "with or without such modifications and additions as relate to procedure and remedies"—it is merely to show which Dominion it may be) "provides adequate protection within the Dominion for the works of authors who are British subjects resident elsewhere than in that Dominion, or who are resident within the parts of His Majesty's Dominions to which this Act extends" (that is to say, Great Britain and the other Dominions so far as they have adopted the Act) "His Majesty may by Order in Council direct that this Act, except such parts (if any) thereof as may be specified in the Order, and subject to any conditions contained therein, shall within the parts



" of His Majesty's Dominions to which this Act extends apply to works the authors " whereof are resident within the first-mentioned Dominion " (I think that is clear), " and that copyright subsisting by virtue of this Act in any work shall not cease " by reason of the work being first published in that Dominion " (that Dominion being a dissenting Dominion), " but, save as provided by such an Order, works the " authors whereof are resident in a Dominion to which this Act does not extend, " whether they are British subjects or not, shall not be entitled to any protection " under this Act.

Sir RICHARD SOLOMON : Does that not require some limitation ? As I read it it gives His Majesty by Order in Council legislative power over a self-governing Dominion which has assented to this Act or which has passed similar legislation ; in other words, by Order in Council it may confer privileges within a self-governing Dominion on a person publishing in a Dominion which has not assented to this Act.

The PRESIDENT : That is so.

Sir RICHARD SOLOMON : I would suggest that there should be some modification and that it should read " in such parts of His Majesty's Dominions to which this Act extends as are mentioned in the Order. " " His Majesty may by Order in " Council direct that this Act, except such parts (if any) thereof as may be specified " in the Order and subject to any conditions contained therein shall extend "—I should say " within such parts of His Majesty's Dominions as the Act extends to mentioned in the Order. " It can only apply to the Colonies or to such Dominions as may assent to it.

Mr. FISHER : I think from the way this reads, if one of the self-governing Dominions assents to the Act—or even passes laws similar to the Act—then His Majesty in Council here can extend the right to any part within that Dominion.

The PRESIDENT : Sir Richard, remember this, at least I think this is so, that if this is extended by an Order in Council to a particular Dominion which has assented to the Act, they have assented to the Act with this clause in it and are parties to it.

Sir RICHARD SOLOMON : Still it becomes a very important part of the Act ; this very clause might make a self-governing Dominion jib rather at taking the Act over. It might be an obstacle.

The PRESIDENT : Would you mind repeating your words ?

Sir RICHARD SOLOMON : Instead of saying " shall within the parts of His Majesty's Dominions to which this Act extends, " I should say " shall within such parts of His Majesty's Dominions to which this Act extends, as are mentioned in the Order. "

Mr. LIDDELL : " As are mentioned in the Order. "

Sir RICHARD SOLOMON : Yes. It is a question whether they would consent to the Order applying to that particular Dominion.

The PRESIDENT : I see no objection in principle to that at all.

Mr. LAW : Is it really correct ? You have two relatives, " as " and " which, " and as you read it it really makes the " which " apply to the Dominions.

The PRESIDENT : Mr. Fisher, how does this strike you ? I think the Dominion ought to have the opportunity if it wishes. I do not see that it is likely to arise because the Dominion which has assented will have assented to this clause. I see the force of Sir Richard's point, but it might possibly make them a little less inclined to agree to this.

Mr. FISHER : The point is this, that supposing at the first the Order is not issued until after a Dominion has passed the Act, and then later on the Order is issued by the King in Council here, it would have force in the Dominion without due intervention or opportunity of that Dominion.

The PRESIDENT : I take it that Sir Richard means that none of these other Dominions would be mentioned in the Order unless their assent had been received.

Sir RICHARD SOLOMON : Supposing Canada does not assent to this Act, and does not pass similar legislation (to take an illustration), then under this clause as it stands you might by Order in Council give Canada privileges in South Africa and in Australia which are given in this Act without consulting South Africa or Australia at all.

The PRESIDENT : I gather that you think your words " mentioned in the Order " would imply in themselves that the particular Dominions before the Order is issued must have been consulted.

Sir RICHARD SOLOMON : Yes, I do not think it is necessary to put that in the Act ; you would not do it without consulting them.

The PRESIDENT : I do not see any objection to this, I think probably it would be an advantage that they should be consulted. Mr. Fisher, I do not see any objection to it on principle, do you ?

Mr. FISHER : I am afraid these words hardly change the idea.

The PRESIDENT : That is what I say.

Mr. LIDDELL : It enables an Order in Council to be made with regard to parts of the Dominions only, not necessarily with regard to the whole of them.

The PRESIDENT : And it would not prevent any further Order being made.

Mr. LIDDELL : You could make a particular Order confined to South Africa.

Sir RICHARD SOLOMON : Yes.

The PRESIDENT : In the first instance the Order might apply to the United Kingdom and Australia and subsequently another Order would extend it to the Cape.

Sir RICHARD SOLOMON : Yes.

Mr. FISHER : That, I think, would be quite feasible, but the whole difficulty, and Sir Richard has brought it out, is that the Order will apply to a self-governing Dominion without any authority from that Dominion, and I do not think that is provided for yet.

The PRESIDENT : Sir Richard's words would do that.

Mr. FISHER : I do not quite see that.

The PRESIDENT : The only way would be again to repeat the question of the assent.

Sir RICHARD SOLOMON : You might make it clear by a very little verbiage.

Mr. FISHER : I think you will have to leave the clause as it was, and put a proviso at the end of the clause that any such Order shall only apply to a Dominion provided that it assents, as in clause 27.



The PRESIDENT: I would rather that we put in "assent" than standing out as it were; if we could add some words to Sir Richard's, and say "after assent," or something like that, rather than putting it in a negative way, it would be better.

Mr. FISHER: Would it be possible to say that "such Order shall not be issued affecting any self-governing Dominion without the assent of such Dominion"?

The PRESIDENT: Yes, but even with that I am not sure as to the wording.

Sir H. LLEWELLYN SMITH: That would mean an Act of the Legislature. You would not want to have an Act of Parliament, it would be too complicated. Would "except after consultation" do?

Mr. FISHER: I think it would.

Sir RICHARD SOLOMON: I think that would do.

Mr. FISHER: This is not the conferring of power on the Governor in Council of the Dominion; it is the power of the King in Council here, which is quite different.

Sir RICHARD SOLOMON: Yes.

Mr. FISHER: If it is done with the assent of the Dominion.

Sir RICHARD SOLOMON: That would be all right.

The PRESIDENT: I think "after consultation" would be sufficient, Sir Richard, would it not—something that should make it clear that we have got to get the agreement of the Dominion with regard to it.

Sir RICHARD SOLOMON: Quite so.

The PRESIDENT: We will suggest words as to that. I was going to propose in any case that these three new clauses would be reprinted before our next meeting; in fact, I thought we should have as a separate paper just to see how they are, with 27, 28, and 29 reprinted.

Mr. LAW: Might I suggest that instead of "within such parts" it should be "within such of the parts," because then you will not get "which" and "as" together? The clause would then run—"within such of the parts to which the Act extends as are mentioned in this Order."

Mr. LIDDELL: "Within such of the parts of His Majesty's Dominions to which the Act extends as are mentioned."

The PRESIDENT: That would do, and then the exception would be "after consultation."

Sir H. LLEWELLYN SMITH: We have not gone in detail through the international part, but I think we did go through it.

Mr. JUST: I think you said you would revert to 33.

The PRESIDENT: We might revert to 33 now; we have done the other. Mr. Fisher, you will remember that we discussed it—page 17-33 (2). "The Governor in Council of any self-governing Dominion to which Part I. of this Act extends, may, as respects that Dominion, make the like Orders." I think you were satisfied, on the whole, that that excluded you practically from the American clause if we might call it so.

Mr. FISHER: I think so. Might I suggest that a clause like that should be embodied in or added to this alternative for clause 28 (3)?

The PRESIDENT: I think it would be a very good thing, at any rate, to bring that up to our Dominion clause.

Sir RICHARD SOLOMON: You cannot do that, I think.

Mr. LIDDELL: I do not think it is possible—the President's suggestion—to bring this up to the Dominion's clause. It is essentially a part of the international copyright.

The PRESIDENT: But Mr. Fisher proposes, I understand, to apply the same principle.

Mr. FISHER: I suggested that the same principle should be embodied in this clause.

Mr. LIDDELL: That would be easily done.

Mr. FISHER: Making it a proviso to 28, or an additional clause. This will be in the new printing, clause 28, subsection (4), I think. Then, could this not be for the Imperial Government, and then a clause similar to subsection (2) of clause 33 made subsection (5) of clause 28?

Mr. LIDDELL: It could be done.

Mr. FISHER: If that would not be too cumbersome.

The PRESIDENT: I think that would make it very clear.

Mr. FISHER: And it would obviate entirely the feeling you have, Sir Richard.

Sir RICHARD SOLOMON: Yes, I think so.

Sir H. LLEWELLYN SMITH: In that case the clause about consultation would go out.

The PRESIDENT: It would be instead of that, an alternative.

Mr. FISHER: Yes, that is what I have in mind; I think it would be more clear.

Sir H. LLEWELLYN SMITH: It would be pretty complicated still.

The PRESIDENT: Then "Supplemental Provisions."

Sir H. LLEWELLYN SMITH: There is a very big thing there, clause 35.

The PRESIDENT: Clause 35, "Licences to publish works." This is what I may call the protection of the public against the rapacity of the authors and publishers. If they are to have their term the public ought to be protected against the holding up of works or publishing them at very high prices or in very few editions, and so on. I think it is absolutely essential from the point of view of the public that some clause of this sort should be inserted if we are to extend the term. I think that is a proper protection to the public. There is a certain protection at the present moment with regard to this whereby, on an application to the Judicial Committee of the Privy Council, they may grant a licence to publish a book to the complainant who alleges that the proprietor of the copyright in the book after the death of its author has refused to republish or to allow the republication of the same. This is purely a question of republication. I believe that has hardly ever been acted upon; it is a very cumbersome and costly thing, and it is only a question of republication. We go further than that, and we propose that "any person interested may present



" a petition to the Comptroller-General of Patents, Designs, and Trade Marks alleging that, by reason of the withholding of the work from the public or of the price charged for copies of the work or for the right to perform the work in public, the reasonable requirements of the public with respect to the work are not satisfied, and praying for the grant of a licence to publish the work."

Mr. LIDDELL: "Publish or perform," it ought to be.

The PRESIDENT: Yes, instead of going to the Judicial Committee of the Privy Council we propose that the Comptroller-General of Patents, Designs and Trade Marks should be the person to whom the application should be made. It very largely extends the right of the public to see that these reasonable requirements are met, and it also makes it very easy and inexpensive for applications to that effect to be made. I think as it is drawn it meets the point, and naturally it would do a good deal to allay any alarm that might be felt against any extension of the period of years. How does this strike you, Lord Tennyson?

LORD TENNYSON: I think I proposed this.

The PRESIDENT: In principle you agreed to it the other day.

Sir H. LLEWELLYN SMITH: As a matter of drafting why have you left out artistic works?

Mr. LIDDELL: Because I thought you said we could not extend it to artistic works.

Sir H. LLEWELLYN SMITH: I think we decided we should not extend it to unpublished artistic works, but what about an engraving?

The PRESIDENT: I think you must put the whole lot in if we give them the 50 years; it may not be practical, but you must put them all in.

Mr. LIDDELL: The whole value of an engraving might be in the restricted number of the copies.

The PRESIDENT: Then it is a perfectly reasonable restriction. This is a reasonable requirement.

Mr. ASKWITH: Take an engraving, as Mr. Liddell was saying, you very often have it suggested to you that if you subscribe for a particular engraving there will only be 50 copies made and the plate will be smashed up afterwards, and there you are the sole proprietor of one copy out of 50. If the reasonable requirements of the public are that they should be thrown broadcast you are done as a purchaser.

Mr. LIDDELL: Of course there would have to be a new engraving and a new plate.

Mr. TEMPLE FRANKS: It would not probably have the same value as the original 50.

The PRESIDENT: You might not be able to reproduce it at all.

Mr. ASKWITH: If I bought a very valuable thing in that kind of way, I do not think I should care that it should be reproduced in almost a similar manner.

The PRESIDENT: That is not withholding the work from the public.

Mr. LIDDELL: Yes, it would be.

Mr. TEMPLE FRANKS: You have to face that possibility now, directly your copyright is over, that your fiftieth copy will become only one of a thousand.

The PRESIDENT: As Mr. Franks says, as soon as the copyright is through, any one may reproduce your engraving, and is it right that you should have 20 more years given to your engraving without some possibility of protecting the public?

Mr. TEMPLE FRANKS: After the life of the author?

Mr. ASKWITH: I am looking at it for the moment not from the author's point of view. He has parted with the thing altogether, or rather he has smashed his plate. I am looking at it as a purchaser or collector of engravings—I have invested money in it.

Mr. FISHER: The reproduction after that would not be the same.

LORD TENNYSON: The original engraving would always have its price and get more and more valuable.

The PRESIDENT: I do not think the re-engraving would depreciate the value of the original engraving at all. What other ground is there for leaving out the engraving? I think it would be very difficult to define any distinction; if we give a larger term to all of them, and make them all on the same basis as regards period, they all come under the same possibility—the public must have the same opportunity on reasonable grounds shown of protection against unreasonable withholding, and so on. I did not notice that they were not in. Mr. Fisher, do you think that is a fair clause?

Mr. FISHER: I am quite satisfied with that clause.

The PRESIDENT: Of the two points, as I have shown to the Conference, one is that we have enormously extended the public opportunity of re-publication, cheapness, and so on, and there is also a very important point, that we are no longer retaining the appeal to the Judicial Committee of the Privy Council, but are substituting the Comptroller-General of Patents, Designs, and Trade Marks. On the whole, we think he is the best officer and he is cheaper and accessible.

Mr. FISHER: The appeal in different parts of the Dominions might be different; with us it would be to the Commissioner of Copyright.

The PRESIDENT: Clauses 36 and 37, "Saving of University Copyright" and "Saving of Compensation to certain Libraries." As to the "Interpretations," I think we must go through these. I will take them one by one and see if anyone has anything to say about them.

Mr. ASKWITH: I have a criticism here that the word "personal character" is rather an odd phrase to apply to cinematographs. "A cinematograph production" where the arrangement or acting form or the combination of incidents represented "give the work a personal and original character" is the language used in the Convention.

The PRESIDENT: I think that should come out.

Mr. LIDDELL: That is the Convention. You do not know what is meant by "original"; the court have said that the photograph of a picture is an original photograph.

Sir H. LLEWELLYN SMITH: The creation of an individual.

The PRESIDENT: If it is in the Convention it had better remain in; otherwise it ought to come out.

Mr. LIDDELL: As Mr. Ritchie has pointed out, at the present moment a book is defined as including plans, tables, and charts.

The PRESIDENT: Are we defining what is a book?



Mr. LIDDELL: No, we have no definition of a book.

The PRESIDENT: What is the existing definition of a book? Have you got that there?

Mr. LIDDELL: Yes.

Sir H. LLEWELLYN SMITH: Somehow or another we have got to make sure that geographical charts and things like that are included, and it seems to be doubtful whether they are.

Mr. LIDDELL: It includes "every volume, part or division of a volume, "pamphlet, sheet of letter press, sheet of music, map, chart, or plan separately published," and no one has ever been able to determine what "separately published" means.

The PRESIDENT: That would cover your geographical charts.

Mr. LIDDELL: But that is not reproduced in the Bill; I have read out the existing definition of the 1842 Act. We have relied on literary work as including all those.

Sir H. LLEWELLYN SMITH: Could you say that literary work includes charts and maps?

Mr. LIDDELL: Yes, by express provision.

The PRESIDENT: "Dramatic work" and "musical work": is there anything on that? "Artistic work."

LORD TENNYSON: I suppose this translation of "mise en scène" includes scenario?

Mr. LIDDELL: Yes.

Mr. FISHER: Without defining a "book," would it be possible to add some words, including charts and maps and so on?

Mr. LIDDELL: I think we had better define "literary work" as including those.

Mr. FISHER: That would be all right.

The PRESIDENT: As to "artistic work," is there anything to be said?

Sir H. LLEWELLYN SMITH: That is distinctly new.

The PRESIDENT: "Artistic work" includes works of painting, drawing, sculpture, architecture, and artistic craftsmanship, and engravings and photographs. "Work of architecture" includes any building or structure, or part thereof, which is the subject-matter of an "original and artistic," and, I think, "architectural design" should come in.

Mr. LIDDELL: Take the ground plan of a building.

The PRESIDENT: Did we not bring in the word "artistic" in our ingenious clause?

Sir H. LLEWELLYN SMITH: What about a ground plan?

Mr. LIDDELL: A ground plan might be the thing a man does not want copied at all.

Mr. TEMPLE FRANKS: He has the copyright of that.

Mr. LIDDELL: But some one goes and takes a plan from the building itself, not from his plan.

Mr. FISHER: Our resolution D. is that "the Conference is of opinion," and so on, "that an original work of art should not lose the protection of artistic copyright solely because it consists of or is embodied in a work of architecture or craftsmanship, but that it should be clearly understood that such protection is confined to its artistic form, and does not extend to the processes or methods of production, or to an industrial design capable of registration under the law relating to designs destined to be multiplied by way of manufacture or trade."

The PRESIDENT: Where is "architecture" mentioned?

Sir H. LLEWELLYN SMITH: Architecture is brought in in those two definitions.

Mr. LIDDELL: That is the artistic work.

Mr. ASKWITH: The difficulty of using the word artistic is that you have to go to the Courts to define what "artistic" means, which is objectionable, because one judge may take one view of a thing which is original and say that it is not artistic. I mean he might have peculiar views of his own as to what ought to be artistic.

Mr. FISHER: I think the point is that there may be architectural work which is not artistic.

Mr. RITCHIE: Might that not be included with your maps and charts—"and architectural plans"?

Mr. ASKWITH: Then you will have a judge deciding whether it is artistic or not.

Mr. RITCHIE: I mean bringing it into the class with maps and charts.

Mr. ASKWITH: He would bring it into the wrong domain of decision. Take a very roccoco building, one man might say it was a most hideous thing, and he would not call it artistic, and yet it might be entirely original, and 20 years afterwards fashion might change and it might be considered a most charming thing.

Sir H. LLEWELLYN SMITH: You do not escape from that anyhow; we protect artistic work, and ultimately it will have to be decided by the Courts whether the thing is an artistic work. The difficulty applies to all other works of art, does it not? What was Lord Gorell's Committee's recommendation about that? This reproduces something in their report, I think.

The PRESIDENT: I think the broader we make it the better, because we have got to show that we are not skimming it.

Mr. TEMPLE FRANKS: I think some difficulty might arise out of those words "or part thereof," they might signify a little ornamental design.

Sir H. LLEWELLYN SMITH: I do not see how you want "the part thereof," because in clause 1 copyright means "the sole right to produce or reproduce the work or any substantial part thereof," and therefore you have not got to insert the word "part."

The PRESIDENT: I think we had better leave in the word "original," because, we want to make it clear; it is a new departure, we want to make it clear that we are not giving copyright to anything that is not original. "Engravings" and "Photographs," is that all right?

Sir H. LLEWELLYN SMITH: If you are to assimilate photographs and engravings as regards the term of protection, the double definition will not matter much.



The PRESIDENT: "Cinematograph," "Pirated," "'Publication,' means the issue of copies to the public." How about those? These are formalities—"and does not include the performance in public of a dramatic or musical work, the exhibition of an artistic work, or the construction of a work of architecture;" are you content to leave that out?

Mr. LIDDELL: Leave it in.

LORD TENNYSON: If a dramatic work is published before ordinary publication, performance means publication.

Mr. LIDDELL: It is a question which has never been decided whether a public performance confers copyright, as apart from performing right.

Sir H. LLEWELLYN SMITH: I think in connection with that definition of publication you almost want to read subsection (3) at the top of the last page.

The PRESIDENT: "For the purposes of this Act a work shall be deemed to be first published within the parts of His Majesty's Dominions to which Part I. of this Act extends, notwithstanding that it has been published simultaneously in some other place, unless the publication in such parts of His Majesty's Dominions as aforesaid is colourable only, and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two countries if the time between the publication in one such country and the publication in the other country does not exceed 14 days."

Sir H. LLEWELLYN SMITH: The object of that is to compel publication to be something substantial.

The PRESIDENT: And also more or less simultaneous. Is there any objection to that?

Sir H. LLEWELLYN SMITH: There will probably be comment on the double definition, but I think it is right.

The PRESIDENT: "Performance," "Delivery," "Plate," "Lecture." Does "Lecture" include address, speech, and sermon?

Mr. JUST: I was only going to say, with regard to "self-governing Dominion," that of course, as I have already explained, the Australian States are not included, but I would also like to observe that we have not made any provision in the course of the Bill for applying it to Protectorates, and that, I think, will have to be done; we will need to have a separate clause to apply it to them by Order in Council. They do not come within Possessions.

Sir H. LLEWELLYN SMITH: Are they not included in His Majesty's Dominions?

Mr. JUST: They are not parts of His Majesty's Dominions.

Mr. LIDDELL: You can do that without express authority, can you not?

Mr. JUST: It is better to have express authority.

The PRESIDENT: Why is sub-section (2) in brackets?

Mr. LIDDELL: Because I doubt whether it is wanted at all.

The PRESIDENT: These are additional definitions as it were?

Mr. LIDDELL: You mean sub-section (2) there.

Sir H. LLEWELLYN SMITH: That is publication without consent.

Mr. LIDDELL: That is publication without consent; publication outside the parts of His Majesty's Dominions to which this Act applies divests copyright. No

one who happens to get hold of an author's manuscript ought to be able to go and deprive him of copyright by publishing it abroad. That is the object of it.

The PRESIDENT: This might happen once in a million times, if I leave a manuscript of my book about which is of great value and some one steals it and publishes it before I have a chance.

Mr. LIDDELL: If it was published abroad then you would lose the copyright.

The PRESIDENT: I should not think this was practical politics. He would have his remedy under the common law, would he not? It is stealing.

Mr. LIDDELL: You could sue him and get damages out of him, but you would have lost your copyright.

The PRESIDENT: If you lost your copyright you could have your damages.

Mr. LIDDELL: He might be a man of straw and not able to pay you a penny.

The PRESIDENT: You propose to leave it out.

Mr. LIDDELL: I think something must be in.

The PRESIDENT: We will look at that. Subsection (4), this is the last point. "For the purposes of this Act the author of a work shall not be treated as resident in a country unless at the time of completion of the work he is either domiciled in the country or has resided in the country for a period of not less than three years immediately preceding that date." Three years is rather stiff, I should have thought.

Mr. ASKWITH: I should put it 12 months for the reason that it is a rather wise thing to encourage literary and artistic people to come to your country.

The PRESIDENT: As long as they are *bonâ fide* living there that they should have copyright.

Mr. JUST: I think we ought to have "resident in a country or part of His Majesty's Dominions" and then "domiciled in the country or part of His Majesty's Dominions" in order to bring in the naturalised British subject.

The PRESIDENT: Will you just read your words again?

Mr. JUST: Sub-section (4): the second line would read "resident in a country or part of His Majesty's Dominions" and then "domiciled in the country or part of His Majesty's Dominions," and so on in each case.

Sir H. LLEWELLYN SMITH: Supposing we appointed a three years' limit and supposing he had spent two years in Australia and one in Canada, would not they add together?

Mr. JUST: Not at present. We might put in a clause to that effect here.

The PRESIDENT: I see no objection to that. What do you think, Mr. Fisher—to say that he might spend part of his year in one part and part in another.

Mr. JUST: You ought to have a minimum.

Mr. FISHER: If Resolution B is to be proceeded with this would affect a man who was *bonâ fide* resident therein. I suppose the interpretation of these words would be dependent on this clause.

Sir H. LLEWELLYN SMITH: This is intended as the interpretation.



The PRESIDENT: The point of that is: "relates solely to works the authors of which are *bonâ fide* resident therein."

Mr. FISHER: Exactly.

Sir H. LLEWELLYN SMITH: Therefore you see the whole of the Union becomes one place; they could move about freely.

Mr. FISHER: I should think if they moved about within the Union or within the Empire the time ought to count.

The PRESIDENT: That is what Mr. Just's suggestion was.

Sir H. LLEWELLYN SMITH: It was rather to prevent them.

The PRESIDENT: His works would allow it with a big minimum.

Mr. JUST: If you had a minimum of a year, I think that would work sufficiently, and the reason why you want the words "part of His Majesty's Dominions" and "domiciled" is that we have to deal not only with a British subject but with a naturalized British subject who, if he is out of his country and in a foreign country, would not come in under the residence provision here but would have to come in under the domicile provision. If you said "domiciled in the country" that would not cover the separate domicile of the various inhabitants of the separate dominions.

Mr. TEMPLE FRANKS: What would "country" mean here?

Mr. JUST: It is used, you see, in two places before; first of all on page 1—"or is resident within such parts of His Majesty's Dominions" and then you have a foreign country on page 16, 31 (1) (a).

Mr. TEMPLE FRANKS: Would you not say "in the Dominions or foreign country"?

Mr. JUST: What does a country at present mean here?

Mr. TEMPLE FRANKS: It appears to be rather open to doubt.

Sir H. LLEWELLYN SMITH: It will want a little looking into as to what "country" means.

Mr. LIDDELL: This is an interpretation clause, and you have to consider in relation to the clauses where "resident" is used—"resident in the parts of His Majesty's Dominions to which this Act extends." You are defining residence there; that is to be treated as a country.

Mr. TEMPLE FRANKS: Not the whole of the British Dominions.

Mr. LIDDELL: No.

Mr. JUST: A naturalized British subject is only a British subject in the particular part of His Majesty's Dominions where he is naturalized and therefore you must make the domicile clearly distinct—"domiciled in the country or part of His Majesty's Possession."

The PRESIDENT: We might postpone that. There are one or two points reserved.

Adjourned to Monday next at 12 o'clock.

## SIXTH DAY.

, Monday, 20th June 1910.

PRESENT:

The Right Hon. SYDNEY BUXTON, M.P. (*President of the Board of Trade*),  
(President).

Sir H. LLEWELLYN SMITH, K.C.B. }  
G. R. ASKWITH, Esq., C.B., K.C. } (*Representing the Board of Trade*).  
W. TEMPLE FRANKS, Esq. }

H. W. JUST, Esq., C.B., O.M.G. (*Secretary to the Imperial Conference*,  
*representing the Colonial Office*).

A. LAW, Esq., C.B. (*representing the Foreign Office*).

F. F. LIDDELL, Esq. (*of the Parliamentary Counsel's Office*).

The Hon. SYDNEY FISHER, accompanied by P. E. RITCHIE, Esq. (*representing the Dominion of Canada*).

The Right Hon. LORD TENNYSON, G.C.M.G. (*representing the Commonwealth of Australia*).

The Hon. W. HALL JONES (*representing the Dominion of New Zealand*).

The Hon. Sir RICHARD SOLOMON, K.C.B., K.O.M.G., K.C.V.O., K.C. (*representing the Union of South Africa*).

A. B. KEITH, Esq. (*of the Colonial Office*) and } *Joint Secretaries*.  
T. W. PHILLIPS, Esq. (*of the Board of Trade*) }

The PRESIDENT: We have circulated the reprint of what are called the Dominion clauses as we agreed upon them on the last occasion. I do not know whether you would like me to go through them one by one in case anything arises upon them. Clause 27, sub-clause (1), we agreed upon before, and that is really not new. Sub-clause (2) is new in the sense that we adopted it last time, and I think we went through it very carefully then. Clause 28, sub-clause (1), we also agreed to. Clause 28, sub-clause (2), was the temporary clause which we also agreed. Clause 28, sub-clause (3), is the one in order to make clear subsection (3), which was not very clear as it appeared in draft; I think it is clear now.

Sir H. LLEWELLYN SMITH: It is the new proviso.

The PRESIDENT: Yes, which I think Mr. Fisher suggested should be brought up here.

Mr. LIDDELL: Not brought up, but assimilated.

The PRESIDENT: We leave it in the other part as well.

Mr. LIDDELL: Yes, it is left in the other part.

The PRESIDENT: It is practically in the same form.



LORD TENNYSON: Yes, certainly.

The PRESIDENT: Clause 29 is to pass supplemental legislation, and that, I think, was seen last time. It is only supplemental. Now, Lord Tennyson, if you will kindly read your telegram?

LORD TENNYSON: I have not even read this telegram myself yet.

The PRESIDENT: Is it in reply to your own telegram?

LORD TENNYSON: Yes, it is in reply to the telegram which I sent to ask whether they would pass an Act. This is the telegram: "Your telegram, 14th June, copyright. Think it should be made clear that Act should cease to extend after withdrawal assent. Assent or withdrawal should be expressed by Act of Dominion Parliament, but will again urge that importance of uniformity makes it advisable to extend Act to whole Empire, except Dominions, which expressly dissent, and that reservation of power to reject is ample safeguard of right of self-government. Afraid unnecessary concession to Canada will seriously impair results."

The PRESIDENT: Of course, they are not really seized with what has occurred here. I think we have done our best to meet their views and to meet the Canadian views; indeed, I venture to suggest that we really have done both somewhat ingeniously, and made it so that the Act will apply generally, but will at the same time enable Canada in her peculiar circumstances to amend it in parts. I think it is quite clear, from what has occurred here, that each of the Dominions is anxious, as far as possible, to attain and maintain uniformity, and, I think, except in so far as Canada may have to make some special reservations or alterations, she also desires, as far as possible, to attain that uniformity.

LORD TENNYSON: I think that is satisfactory.

The PRESIDENT: Yes; we were waiting actually to confirm it, and I do not think this in any way goes contrary to the Resolutions that we have agreed to.

LORD TENNYSON: No, it does not clash with our Resolutions.

The PRESIDENT: There is another point on page 21 of the Bill, sub-section (4) of clause 38, which is the question as to residence. You will remember we discussed it and tried to get some drafting which would meet it. Mr. Just will explain how it differs from the other one. "For the purposes of this Act the author of a work shall not be treated as resident in a foreign country or within the parts of His Majesty's Dominions to which this Act extends unless at the time of the completion of the work he is either domiciled in a foreign country or in some such part of His Majesty's Dominions, or has resided in a foreign country or in some such part of His Majesty's Dominions for a continuous period of 12 months immediately preceding that date, or has resided in one or more foreign countries or in one or more of the parts of His Majesty's Dominions to which this Act extends for periods amounting in all to three out of the five years immediately preceding that date."

Mr. JUST: This clause has been drafted in accordance with the discussion that took place at the end of the last meeting, and is intended to gather up the result of that discussion. It first of all fixes a minimum of 12 months preceding the date of completion of the work, and then allows three years out of five years immediately before the date of the completion of the work to be accumulated as a qualifying period. The period may be divisible into parts served in either parts of foreign countries of the Union or in parts of His Majesty's Dominions. The words in the Bill were "three years (quære twelve months)," and this draft clause has combined those two suggestions.

The PRESIDENT: It is a continuous period.

Mr. JUST: Yes. I think it was Mr. Fisher who, at the last meeting, rather accepted this view.

The PRESIDENT: This is making it negative instead of positive.

Mr. JUST: I would point out that the Resolution arrived at is in quite general terms. I mean you are proposing to go to Berlin and to say: "We reserve that authors shall be *bonâ fide* resident." The Resolution does not specify any period at all, but here we are making it something quite definite.

The PRESIDENT: The other clause was a definition of what was a resident, and here it gives a definition of what is not a resident. You have turned it round. What is the object of the last sentence of the proviso?

Mr. JUST: Supposing a man had not resided 12 months continuously anywhere, then if he had resided for three years out of the last five years in Union territory he would become qualified.

The PRESIDENT: Do you think it is necessary to put that in?

Sir H. LLEWELLYN SMITH: I do not think this does that, if that is the intention; because it says he is to reside in foreign countries or one or more parts of His Majesty's Dominions. I see it might be read either way.

Mr. JUST: We ought to make it clear that it is the whole of Union territory; that not only the parts of His Majesty's Dominions to which the Act extends, but also foreign countries of the Union are all in the area in which this three years' qualifying period can be served.

The PRESIDENT: Is there any object in having the second period? I should have thought 12 months was sufficient; that is to say, his qualification is that he is to have 12 months in some such country, it does not matter whether in a Dominion or in England.

Mr. JUST: You would have to allow for temporary absence; that would go without saying.

Mr. ASKWITH: What about a man like Robert Louis Stevenson, who went to live in Samoa?

The PRESIDENT: He was a British subject.

Mr. LIDDELL: Is it not too definite in the way it is put? You may have to prove residence a hundred years after a man is dead, in the case of an unpublished work which is first published after his death. How in such a case could you prove he had resided 12 months in a particular place?

The PRESIDENT: How are you going to prove it? You want to give some copyright to a foreigner who is *bonâ fide* residing in a Union country but who is not a subject.

Mr. LIDDELL: You can require residence, but to require residence for a particular period is another thing.

The PRESIDENT: We must put in some period.



Mr. FISHER: There are three provisoos:—One, that he is domiciled; another, that he has resided continuously for 12 months; and the other, that he has resided altogether, in broken periods, for three years out of five years.

The PRESIDENT: What does "domiciled" mean?

Mr. LIDDELL: You can have a domicile the day after you have come to reside in a place if you have an intention of permanently residing there.

Mr. ASKWITH: One of the most difficult questions in the law is to decide whether a man is domiciled or not.

Mr. LIDDELL: Yes, I agree.

Sir RICHARD SOLOMON: Cannot you leave out all about domicile and confine it to residence?

Mr. LIDDELL: But if a man has definitely come over here intending to make England his home, why should not he get copyright the day after he comes here?

Sir RICHARD SOLOMON: Because probably before he made up his mind to make it his home he would have resided for a certain period.

The PRESIDENT: It is intended as a protection against an American coming over here and residing here for a day and publishing his works and getting copyright here and in Canada, and so on. That is really the object of it more than to give the author the advantage. It is to prevent the abuse of the right of getting copyright by first publishing in a Union country.

Sir H. LLEWELLYN SMITH: You want to recognise all residence except what you may call colourable residence, just as we recognise all publication except colourable publication. You want to make it as wide as you can really.

Mr. LIDDELL: Yes, as wide as you can.

The PRESIDENT: What is the objection to the word "domicile"?

Sir RICHARD SOLOMON: I think it is exceedingly difficult to prove. I think it much better to have residence.

Mr. JUST: We must have "domiciled," because only that will cover the British naturalized subject who is living outside the British Dominions.

Sir RICHARD SOLOMON: Then if that is the case, if it is to cover a British naturalized subject, why not say so? I thought it was suggested that for the purposes of this Act a British subject should be any person naturalized by any of the laws of the self-governing Dominions.

The PRESIDENT: Surely, if he is a British subject, he is covered already.

Mr. JUST: But there is the case of a naturalized subject in the Dominions who only has his rights as a British subject within that Dominion in which he is naturalized.

Sir RICHARD SOLOMON: I do not suppose that a man who is naturalized by the Imperial Act of 1870 is a British subject outside the United Kingdom.

Mr. JUST: Yes, he is.

Sir RICHARD SOLOMON: Why should he be?

Sir H. LLEWELLYN SMITH: Is it not worth while to say boldly, all naturalized British subjects are British subjects for the purposes of this Act?

Mr. JUST: That starts a new principle which is dangerous.

Sir H. LLEWELLYN SMITH: But it is only for the purposes of this Act.

Mr. JUST: But if you do it for the purposes of this Act, then it will be taken as a precedent.

The PRESIDENT: I do not think we had better raise such a point.

Sir RICHARD SOLOMON: I think a court of law would decide that a British subject under this Bill is a natural-born British subject.

The PRESIDENT: Mr. Liddell's point is that a difficulty may arise 50 years hence when you want to prove residence. That being so, the larger the amount of choice the better, and the more easy it is to prove one or the other. Is that why you put in the word "domiciled"?

Mr. LIDDELL: I propose not to put in any precise term, but leave it to the courts to decide whether a man was resident or not, as the present Fine Arts Act does.

The PRESIDENT: What does the present Fine Arts Act say?

Mr. LIDDELL: Simply that he has resided. The words are "being a British subject or resident within the British Dominions."

Sir H. LLEWELLYN SMITH: Have there been any cases under that Act?

Mr. LIDDELL: No, and no one knows at what time residence is required.

Mr. FISHER: Is not this the case of a man who is not a British subject?

Mr. LIDDELL: A man "being a British subject or resident within the Dominions of the Crown" is how the Act of 1862 runs.

The PRESIDENT: There is something to be said for it, and I understand now that no case has arisen upon it.

Mr. LIDDELL: No case has arisen.

The PRESIDENT: If, on the other hand, a court of law took the word "resident" to be vague, it might be a rather serious matter from a resident's point of view.

Sir H. LLEWELLYN SMITH: You want to exclude colourable residence and colourable residence only.

The PRESIDENT: "Residence not exceeding twelve months."

Mr. FISHER: At one time for safety's sake American authors came to Canada and resided in His Majesty's Dominions in Canada for the purpose of securing copyright in Great Britain.

The PRESIDENT: For how long?

Mr. FISHER: It depends on how long they thought it necessary in order to be safe. Mark Twain came to Montreal for six weeks in order to get his copyright for Great Britain, although he never resided in Great Britain at all, and only resided in a Montreal hotel for six weeks. It is a question whether, if he had stayed for only two days, it would not have been enough, but he thought he would make quite sure and stayed six weeks.



Mr. HALL JONES: Then 12 months would not deter them?

Mr. FISHER: I think it would.

The PRESIDENT: Will you have "*bonâ fide* resident" and leave it vague, without saying any number of months? Is there such a phrase as "colourable residence"?

Mr. FISHER: How would the words Mr. Buxton suggested stand in law?

Mr. LIDDELL: It is very hard to say what view the courts would take. Judges would take different views, very different views I should think.

Mr. FISHER: Then it would be safer to define it.

Mr. LIDDELL: No doubt it would be safer to define it if it were not for the difficulty of proof after the lapse of many years.

The PRESIDENT: Before we had "for the purpose of this Act a work shall be deemed to be first published within the parts of His Majesty's Dominions to which Part I. of this Act extends, notwithstanding that it has been published simultaneously in some other place, unless the publication in such parts of His Majesty's Dominions as aforesaid is colourable only and is not intended to satisfy the reasonable requirements of the public." Could not we use there "residence which is not colourable only," keeping to the same phrase? I think perhaps that would be better. I think there is great force in what Mr. Liddell says about the difficulty in proving 50 years hence whether a man has been living 12 months continuously in a place or not. What I want to do is to get rid of the question of domicile.

Sir H. LLEWELLYN SMITH: Where would the onus be then?

Mr. LIDDELL: On the person alleging copyright.

Sir H. LLEWELLYN SMITH: To prove his residence. The onus would be on the other people to prove that it was colourable, that is, on those who disputed it.

Mr. LIDDELL: Yes.

Mr. FISHER: I am afraid that puts the onus on the wrong person.

The PRESIDENT: You want to put the onus of proof on the resident.

Mr. FISHER: On the person claiming the copyright.

The PRESIDENT: The sole object of this is to prevent colourable infringement, so you want to put the onus on the man who is presumably doing that.

Mr. TEMPLE FRANKS: That is right, because he will have knowledge of the fact of his own residence which nobody else will have.

Sir H. LLEWELLYN SMITH: But he may be dead.

Mr. TEMPLE FRANKS: Quite true.

The PRESIDENT: I think you should put the onus on him, because that is the object of the clause.

Mr. JUST: You do not get any further than if you say "*bonâ fide*."

Mr. LIDDELL: I think we are getting back to "*bonâ fide*."

The PRESIDENT: I do not mind "*bonâ fide*," only it might be held by some court of law to mean perpetual residence, might it not?

Mr. TEMPLE FRANKS: On the other hand it may be held that only a week is "*bonâ fide*" residence.

Mr. LIDDELL: I doubt if you are resident at all if you come over for a week.

The PRESIDENT: "*Bonâ fide* and substantial residence," and then a court of law must decide it.

Mr. ASKWITH: "Colourable" connotes an idea which it would be easy for people to understand.

The PRESIDENT: Shall we see what the draughtsmen can do in regard to that and look at it again later?

Mr. LIDDELL: Is the word "domicile" to come out altogether?

Sir H. LLEWELLYN SMITH: Is that the decision of the Conference?

The PRESIDENT: That is the idea.

Mr. LIDDELL: You think it ought to be in?

The PRESIDENT: I am struck by the force of Mr. Liddell's criticism, that 12 months of continuous residence, or whatever it is, may make it difficult to prove it later on, although I do not know that it will not be equally difficult to prove a week.

Mr. TEMPLE FRANKS: You might say either "domiciled or resident for a substantial period."

Mr. FISHER: I do not object to the onus being cast on a foreign resident, and therefore I am not disposed to make it easy of proof for him.

The PRESIDENT: No, I agree.

Sir H. LLEWELLYN SMITH: This does not only apply to people resident in the British Empire, but in Part II. it will be extended to the Convention countries, and therefore we have to consider that they may have very different views as to what is *bonâ fide* residence in one of them, and may not take the same view about three years out of the five years.

Mr. FISHER: I understand that.

The PRESIDENT: Let us see what can be drafted as an alternative.

Mr. FISHER: All I say is, do not make it too easy.

The PRESIDENT: No, I am dead against making it easy. I think those were the points that we undertook at the last meeting should be raised again. I do not think there is now any other point on clauses. I do not know whether any member of the Conference has any other point to raise solely in regard to clauses. If there is no other point I should like you now to consider two things: In the first place, what was suggested by the members of the Conference in regard to the practical introduction of this Bill; and, secondly, there is the question as to what parts of our discussion, if



any, should be published. I think you, Lord Tennyson, told me just now what step you had taken yourself with regard to Australia, and perhaps you will let the Conference know what that is.

LORD TENNYSON: Mr. Liddell and Mr. Phillips kindly drafted me a telegram, and I cabled this telegram summarising the heads of the Bill, and I said that perhaps you might have a first reading of the Bill in July, and would they give their general assent to those heads in view of being able to criticise details if it were really necessary before, perhaps, a Second Reading in October: "Draft Copyright Bill extends to all works specified in Berlin Convention, whether published or unpublished, if authors are British subjects or *bona fide* resident in parts of Empire to which Bill extends. Copyright lost by first publication elsewhere (subject to international agreements). Copyright defined to include any form of reproduction or representation in public, and right to publish unpublished work. Infringer not liable to anything except injunction if no reasonable means of discovering existence of copyright and optional register established as a means of giving notice. Constable (without warrant) may seize copies of literary and musical works on hawkers. Imported pirated copies may be seized by Customs under Customs Act, 1876. Power taken to issue licence to applicant if any work after author's death withheld, or unreasonable charge made for copies, or permission to perform. Author to be first owner of copyright in work except for work made on commission or by employee, in which case first owner to be commissioner or employer. Term of copyright to be life and probably 50 years. Extended term to go to author, but if old copyright assigned, assignee entitled to acquire new term for agreed price. In double authorship, if one author lives beyond other longer than copyright term, copyright extends to life of second author, provided there is clearly no fraud. An article in a newspaper, not being tale or serial, may be reproduced if notice prohibiting reproduction not published in newspaper. Bill does not extend to self-governing Dominion unless adopted by legislation of Dominion. Self-governing Dominions divided into three classes: (1) those adopting Bill; (2) those passing substantially identical legislation; (3) those doing neither. Classes (1) and (2) entitled in other parts of Empire to benefits of Bill; class (3) may have benefits of Bill extended to them by Order in Council or Order of Governor in Council of self-governing Dominion, but otherwise authors resident in class (3) country excluded from benefits, whether British subjects or not. Classes (1) and (2) may introduce modifications as to procedure and remedies and local works, and may go out of Bill whenever they like. Class (3) have power to repeal existing Imperial Acts, but remain subject to them till so repealed. Rights in self-governing Dominions of foreign authors depend on Orders by Governor in Council." That seems to me to be fairly full.

The PRESIDENT: Yes, I had no idea it could be summed up so shortly. I do not know whether Sir Richard Solomon or Mr. Hall Jones would like to follow that example, so that they may put that information before their Governments.

Mr. HALL JONES: I was leaving the matter over until we had practically decided upon the Bill, and then I proposed to send a summary.

The PRESIDENT: I noticed in Lord Tennyson's telegram he rather suggested that I should introduce the Bill first, and then have criticisms afterwards from the Australian Government.

LORD TENNYSON: No, I did not say that; I said they were to send their criticisms on the main heads at once and on the details of the Bill afterwards, if any were necessary.

The PRESIDENT: I see.

LORD TENNYSON: I said, "Cable general assent and criticisms."

The PRESIDENT: You mean, there may only be questions of detail afterwards.

LORD TENNYSON: Yes.

Mr. HALL JONES: I intended to wait until we arrived at the stage which we are at now, when we have gone through the Bill, and have something we can send in the shape of definite information as to the proposals.

The PRESIDENT: That is to say, the conclusions to which we have come at this Conference.

LORD TENNYSON: Would Mr. Hall Jones like to have a copy of my cable?

Mr. HALL JONES: I must say it seems to be summarised very well there.

Sir RICHARD SOLOMON: Are we now allowed to send out the Draft Bill, or is it still confidential?

The PRESIDENT: As I have had to remind the Conference more than once, I have not yet submitted the question to the Cabinet; I thought it was no use going to them until I saw how the matter stood with the Conference. I do not know what view they will take. I feel all right about this part concerning the Dominions, but there may be one or two points to which I may not be able to obtain their consent. The general proposition no doubt they will ratify; but I am not in a position to commit myself to details until I have had an opportunity of putting the proposal before them; and, like Mr. Hall Jones, I have been waiting until the matter was really through this Conference before I drew up a memorandum for the Cabinet, which I now propose to do.

Mr. HALL JONES: I suppose there would be no objection to members of the Conference sending confidentially to their Government a copy of the Bill as we have finally agreed to it?

The PRESIDENT: Let that be when we have reprinted it. I should not send this draft, which has been altered a good deal.

Mr. HALL JONES: I meant to refer to the reprinted copy.

The PRESIDENT: I see no objection to that if it is made quite clear that it is subject to the approval of His Majesty's Government.

Mr. HALL JONES: That will be made quite clear.

The PRESIDENT: It is strictly confidential.

Mr. HALL JONES: Perhaps Mr. Liddell will look through that telegram which Lord Tennyson has just read. I assume it is properly comprehensive, and includes the whole subject-matter under review.

LORD TENNYSON: Yes, I have looked through it very carefully and everything important is included.

Mr. LIDDELL: I may say that I assisted in the drafting of it.

Sir RICHARD SOLOMON: Will you wish us to send a similar draft telegram to our Governments?

The PRESIDENT: No, on the contrary, I have no wish at all: I had much rather it was settled here.

Mr. HALL JONES: It depends, to my mind, upon whether you are going on with the Bill this year. If not, we might well mail the whole thing.

The PRESIDENT: I think I have explained my position with regard to that. I am afraid there is little chance of its passing this year.

Mr. HALL JONES: I think so too.



The PRESIDENT: I rather gather, from what has fallen from the Conference, that it is the general feeling that the Bill should be introduced in order to have it on record; but whether it will get further than that stage this year, it is impossible for me to say.

LORD TENNYSON: Would it not be well to get it through the House of Lords first of all?

The PRESIDENT: I think I would rather have it in my own hands.

Sir RICHARD SOLOMON: I think the Governments of the Colonies will have ample opportunity of considering it, and sending their criticisms here.

Mr. JUST: This will be a confidential draft, and I think that the Secretary of State for the Colonies would wish to send it out to the Governor-General, or the Governor, in order to show that the Colonial Office has taken care that each Government was duly informed.

The PRESIDENT: Perhaps that would be the best way.

Sir RICHARD SOLOMON: Yes.

The PRESIDENT: I think we have practically gone through the clauses except this last one, and agreed to them, and we will now have a reprint made at all events, for the benefit of the Members of the Conference, of the Bill's new form, with all these amendments in. That being so, I see no objection to the copy being sent out in whatever is the proper form of doing it, either through the representatives of the Conference, or through the Governor-General or Governor.

LORD TENNYSON: If this is done at once there is no difficulty in regard to any of the Colonies, except Australia and New Zealand, in your having the first reading in July.

Mr. FISHER: I think the best way to communicate with the self-governing Dominions would be through the Colonial Office and the Governor-General.

The PRESIDENT: That is the usual course, I understand.

Mr. FISHER: And I think it would be the best way too.

LORD TENNYSON: Will you soon give us the Bill?

Mr. FISHER: Or a memorandum of it. I have had a good many inquiries with regard to what the Conference was doing and as to how things were going, and all that kind of thing. I have been wondering whether there was any possibility of somebody preparing a statement of what has been done at the Conference for publication.

The PRESIDENT: That is the second point I was going to raise. We may as well raise the two points together, as they really go to a certain extent together. What does the Conference think is the best method of publishing something with reference to what the Conference has done, and how far we should publish our conversations, because they really amount to nothing more than conversations, that we have had at the various times we have met, or whether we should only publish our conclusions without giving our reasons or our conversations, or whether we should publish something more or less *in extenso*? I have been thinking about it to a certain extent, and I should like to hear what the other members of the Conference think. I have read my own part of the conversations carefully,—I have not been through other people's—in order to see if there were any verbal corrections to make, and I confess I should be very sorry to have all my remarks, though I entirely adhere to them, published; and, secondly, I should be sorry to have them summarised, because the greater part of what one says here is in reference to something that has been said before or in reference to what somebody else has said, and I think anyone who tried

to edit it would have the greatest possible difficulty in so doing. Although I think it a good thing to have these conversations on record for confidential reference, and although my mind is still open, I am getting more and more to think that we ought not to publish anything of what I call the conversations, but should rather confine ourselves to the conclusions to which we have come. How does that strike the Conference?

Mr. HALL JONES: That is to say, you would wish to treat the whole of our work as being Committee work.

The PRESIDENT: Yes, as being confidential or Committee work, except the various conclusions and resolutions to which we have come, and the clauses which we propose to accept, in order to show what was in the mind of the Conference, without giving the grounds on which we arrived at them. On the other hand, there is a great advantage, in the case of a Bill of this importance with the possibility of there being some opposition to it, of having the grounds for our conclusions, and being able to quote them. But on the whole I am inclined to think it is desirable, and in fact we started with our conversations on that basis, that we should not in any case publish them all, and if you once begin to cut any of it out, it may be a very difficult matter to deal with.

Mr. ASKWITH: In any synopsis that was to be published, surely we should have to avoid saying anything about matters of reservation, so that nothing was published in that form before we put it formally before foreign Powers.

The PRESIDENT: You mean, for instance, clause 6?

Mr. ASKWITH: I think it would be very inadvisable to communicate to foreign powers before we published our own Bill, or at least we should defer it as long as possible. If we did publish it foreign powers would at once learn what we are going to do.

The PRESIDENT: Yes, there is that point. There are two clauses, clause 6 and the omission of clause 7.

Mr. ASKWITH: Yes, the matter about confining it to residence and British subjects.

Sir H. LLEWELLYN SMITH: A point that struck me very much when looking through the proceedings is, that they would be quite unintelligible except by reference to early drafts, which would not be published.

Mr. HALL JONES: There is also matter in it which might be very useful to an opponent of the Bill.

Sir H. LLEWELLYN SMITH: Very useful.

Mr. FISHER: It seems to me that the only advantage in publishing the whole thing would be to inform the public of the difficulties which were present to our minds, and which the public at large will not understand in many cases; but I think the difficulties in the way of publishing the whole thing are practically insurmountable.

Mr. HALL JONES: I agree with you.

The PRESIDENT: I think they are insurmountable.

LORD TENNYSON: My view is very strongly against publishing the conversations.

Sir RICHARD SOLOMON: Yes, and that is my view also.

The PRESIDENT: Then the question is: In what form should it appear? The obvious thing would be that we should print the resolutions we have arrived at, and



state that those resolutions have been, after discussion, unanimously arrived at. I think we may say that all the resolutions have been unanimously arrived at. Then there is Mr. Askwith's point about publishing one or two resolutions which amount to reservations. Obviously, while we propose, if possible, to ratify, each country is entitled to make reservations, and I do not see that it matters very much if we state them in black and white in the resolutions we have come to, or put them in the Bill. They are equally obvious there. What does Mr. Law say?

Mr. LAW: I do not see any objection to our stating them, particularly as it seems desirable to publish the Bill at an early period.

Sir RICHARD SOLOMON: If you do not publish the whole of the proceedings here, what is the use of publishing anything at all? If you publish the Bill for anyone who wants to see it, the conclusions are all in the Bill.

The PRESIDENT: There are the resolutions which I should like to have on record. I am looking at it from the point of view of one who is wishing to get the Bill through, and I want to strengthen my hands. For instance, there is the one in regard to architecture, and also the one in which we say that any reservations made should be confined to as few points as possible, and so on.

LORD TENNYSON: And also the "protection of the public" clause after the life of the author.

The PRESIDENT: And the one about the publisher.

Mr. FISHER: And the resolution with regard to the self-governing Dominions.

LORD TENNYSON: That is most important.

The PRESIDENT: Yes, I think it is important we should have those on record.

Sir H. LLEWELLYN SMITH: I noticed that from the moment we took up the draft Bill we ceased to pass resolutions. We have arrived at conclusions quite as important as resolutions, but they are not in the form of resolutions, and I think we should have to put them into that form and pass them formally.

Mr. FISHER: I suggest that those should be embodied in the synopsis of the proceedings.

The PRESIDENT: It is true we started quite rightly by resolutions, in order to get a basis for a Bill, and then the Conference desired, again quite rightly, to have it in the form of a draft Bill to see how it stood; and since then, as Sir Hubert has pointed out, we have ceased to pass resolutions, although our conclusions are embodied in the Bill. I think, as far as that is concerned, the simplest way will be for Mr. Phillips to draw a synopsis of the various resolutions to which we have come, without putting them in the form of separate resolutions taken at separate times, but putting them as the general conclusions at which we have arrived.

Mr. FISHER: Could not those original resolutions be put with these others in that way?

The PRESIDENT: Yes; and to those would be added the gist of these various clauses which we have also agreed, especially clauses 28, 29, and 30.

Mr. ASKWITH: If Mr. Phillips would prepare a draft we should have something before us which we could hack about as we like.

The PRESIDENT: These original resolutions, I think, should appear, because they really form the basis on which we have worked.

Sir H. LLEWELLYN SMITH: If, when we compare them with the conclusions, we find we have really modified them, we shall have to come back to the Conference and get them a little altered—I do not know whether that is so or not.

Mr. FISHER: I do not think, speaking from memory, that we have modified them, but we have amplified them.

Sir H. LLEWELLYN SMITH: That is so. How long could you give for the preparation of this synopsis? because it is rather delicate work.

The PRESIDENT: The question of time really depends upon Mr. Fisher more than anybody else. So far as I am concerned, speaking as President of the Conference, I do not know that there is anything further for us to consider at the present moment. We will reprint the Bill as a fresh draft, and we will ask Mr. Phillips to draw up something in the way of a synopsis for our consideration; but after that I do not know that there is anything further. As soon as that is done, or rather contemporaneously with it, I will be drawing up a memorandum of my own for the Cabinet, and will get their consent as soon as I can; but there is rather an overpressure of work at the Cabinet just now, and it might not be for a week or two that I could get their attention. I shall start upon it now as we have agreed to all the clauses.

Mr. FISHER: Will Mr. Phillips be able to get that synopsis ready within a few days, this week? and then perhaps it could be submitted to us all round without our having a meeting upon it; but if it is necessary to have a meeting again we might do so.

The PRESIDENT: I would suggest that Mr. Phillips should take the resolutions and reprint them, and then take the clauses and amplify the marginal notes and put in the gist of what we have suggested, but not all the smaller clauses.

Mr. FISHER: Would there be any attempt in that synopsis to make a report of the discussions or anything of that kind, or will it just put the results without anything farther?

The PRESIDENT: I think there would have to be a little introductory account of the reason of the Conference.

Mr. FISHER: Certainly; but I meant would anything be put of what has occurred here?

The PRESIDENT: Yes, I think something should be stated to the effect that all these clauses were carefully considered in committee (and a committee implies something which would not be published), and that the conclusions at which the Conference unanimously agreed were as follows. That implies there were conversations.

Sir H. LLEWELLYN SMITH: Would you refer to the existence of a draft which has been approved?

The PRESIDENT: I should say that on this a draft Bill has been prepared, if by that time I can get the consent of my colleagues to it. The draft Bill had better not be printed as an appendix, because we do not want it to appear until it is introduced.

LORD TENNYSON: How soon shall we be able to have the draft Bill?

Mr. LIDDELL: I should think on Thursday morning; I think I could get it ready by then.

The PRESIDENT: It really depends upon Mr. Fisher, because I take it all the others will be here. I am afraid it means that we cannot have it this week.

Mr. FISHER: I do not propose to leave England until after the 1st of July, and I can make my movements here accord with your convenience.



Sir H. LLEWELLYN SMITH: We think we could circulate something before the end of the week.

*It was finally decided to meet on Thursday the 30th at 12 o'clock.*

The PRESIDENT: I would suggest that on seeing the synopsis, if any member of the Conference thinks any additions might be made to it, perhaps he will communicate with Mr. Phillips, in order that those additions may be embodied for consideration at our meeting, and then we shall have the whole thing before us.

Mr. FISHER: We shall have the synopsis as soon as it is prepared.

The PRESIDENT: Yes, and if you wish to suggest any additions we can have them printed.

Sir H. LLEWELLYN SMITH: Then we will have a revised draft ready for the meeting on Thursday the 30th.

The PRESIDENT: Sir Hubert raises this point—which is quite correct—namely, that so far the Conference has not expressed in words its view, either one way or the other, in regard to what the  $x$  should be. You will remember we have now put our copyrights, photographs and all, into one. We have got rid of  $y$ , so there is only the question of  $x$ . The position I had taken up before when we discussed it more or less was that I should like to have the views of the Conference in regard to it in order to place them before the Cabinet. As far as I was personally concerned, I had not really made up my own mind, and I had to consider what I could recommend to my colleagues. I have considered it a good deal and I will put it in this way. I do not want to put pressure on any member of the Conference, but if the Conference were prepared in the circumstances, and after what has passed here, to accept and recommend as we have done in regard to other matters, the 50 years in the Berlin Convention, I should be prepared at all events to put that before any colleagues as strongly as I could, of course, pointing out—which I think is a very important element in this—that the protection clause which we have put in is pretty stiff, and the fact that, as I understand, we are all agreed on “life,” which I think is quite obviously the right thing. If we only put  $x$  as 30 years, it would, I am told, adversely affect about one-third of the existing copyrights, that is to say, that proportion under 30 years would not be advantaged but disadvantaged. That being so I should be prepared, as I say, if it was generally agreed, to put the 50 years. I am bound, however, to say I do so with some reluctance, because when I first considered it it struck me as an excessive term; but I see the immense advantage of uniformity, and I think the arguments brought to bear, and the information given by some of the publishers, go to show it would not be really a very excessive term. Therefore, I should be prepared under the circumstances to support it, but I do not know whether the Conference would be prepared to accept a recommendation or resolution to that effect? Of course, it would immensely strengthen my hands with regard to it if I had a resolution. That is the one point we have left open. What do you think, Mr. Fisher?

Mr. FISHER: My only reason for agreeing to the 50 years is for the sake of uniformity; I should much prefer 30 years, which would not hurt us in any way whatever, and I must say I think it is quite long enough; but for the sake of unanimity I am quite willing to leave it in your hands, Mr. Buxton, and the hands of your colleagues, and to accept whatever the decision is.

LORD TENNYSON: For the sake of uniformity Australia would accept 50 years.

Sir RICHARD SOLOMON: I agree with Mr. Fisher that for the sake of uniformity we ought to accept the 50 years.

Mr. HALL JONES: I think 50 years is too long, and although one may want to give way for the sake of uniformity, if it depended upon a vote, I am afraid I should have to give my vote for something much less than 50 years.

The PRESIDENT: That is the difficulty, and it is one of the reasons why I have not proposed a resolution.

Mr. LIDDELL: If you have 50 years in the Bill you will have something to give, and might compromise it at 40.

Mr. TEMPLE FRANKS: Why not omit the existing copyrights from the Bill? It makes it much more complicated.

Mr. LIDDELL: Then you have the existing Acts going on for the next 20 years side by side with it.

The PRESIDENT: I think we must have one or the other.

Sir H. LLEWELLYN SMITH: The clauses in this Bill applying to existing copyrights would have to be recast and would have to be much more complicated if you had life and 30 years. They would not stand as they are, because you would be cutting it down in many cases.

Mr. FISHER: I must say the report of the Committee influences me very much in favour of 50 years.

LORD TENNYSON: The authors would not thank you for 30 years; they would, I understand, much sooner have the existing term, and if you read Lord Macaulay's speech, and if I remember right, you will see he says 42 years from the date of publication is better for the authors than life and 28 years.

The PRESIDENT: One reason for extending the term is because we are proposing to have it for life and to abolish formalities, and, therefore, some fresh term must be proposed. If we are likely to have a division upon it, I do not want to press it, but I must say I think we ought to have something from this Conference in regard to it.

Mr. FISHER: I would not divide on it at all.

The PRESIDENT: But I am thinking of what Mr. Hall Jones said.

Mr. HALL JONES: I do not wish to divide upon it, only I should have to dissent from the 50 years.

The PRESIDENT: We have not had a division on any of the other questions. In the first place a division was not necessary, and I have not put the resolutions formally. The only point now is whether this might appear as one of our resolutions without any record of what passed.

LORD TENNYSON: Do not you think, for the sake of unanimity, you can accept 50 years, Mr. Hall Jones.

Mr. HALL JONES: I really think the time, life and 50 years, is too long.

Mr. FISHER: The only point is, it may not mean more than 52 or 53 years in the case of immediate death.

LORD TENNYSON: Could you agree to 40 years?

Mr. ASKWITH: 40 years is no earthly good.

Mr. HALL JONES: I think 30 years is quite long enough.

LORD TENNYSON: 30 years is no advantage; that is not so good as the present copyright term.

The PRESIDENT: I will not put any resolutions about it, but I will ask Mr. Phillips to add a paragraph with regard to it to his synopsis, which we can retain or cut out when we see it.

*Adjourned to Thursday 30th instant at 12 o'clock.*



## SEVENTH DAY.

Thursday, 30th June 1910.

## PRESENT:

The Right Hon. SYDNEY BUXTON, M.P. (*President of the Board of Trade*),  
President.

Sir H. LLEWELLYN SMITH, K.C.B. } (*Representing the Board of Trade*).  
W. TEMPLE FRANKS, Esq. }

H. W. JUST, Esq., C.B., C.M.G. (*Secretary to the Imperial Conference, representing the Colonial Office*).

A. LAW, Esq., C.B. (*representing the Foreign Office*).

F. F. LIDDELL, Esq. (*of the Parliamentary Counsel's Office*).

The Hon. SYDNEY FISHER, accompanied P. E. RITCHIE, Esq. (*representing the Dominion of Canada*).

The Right Hon. LORD TENNYSON, G.C.M.G. (*representing the Commonwealth of Australia*).

The Hon. Sir WILLIAM HALL JONES, K.C.M.G. (*representing the Dominion of New Zealand*).

The Hon. Sir RICHARD SOLOMON, K.C.B., K.C.M.G., K.C.V.O., K.C. (*representing the Union of South Africa*).

Sir THOMAS RALEIGH, K.C.S.I. (*representing the India Office*).

A. B. KEITH, Esq. (*of the Colonial Office*) and } *Joint Secretaries*.  
T. W. PHILLIPS, Esq. (*of the Board of Trade*) }

The PRESIDENT: Gentlemen, may I, in the first place, on behalf of the Conference, congratulate Sir William Hall Jones on the honour which he has received?

I would just say that in this draft which has been circulated, we have endeavoured to carry out the conclusion come to by the Conference the last time, namely, that it would be impossible for us to publish any of the actual proceedings. We agreed that we should consider our meetings as being in Committee, and therefore private and not to be published. Of course, members of the Conference and anyone else interested can see them confidentially. It was decided by the Conference, therefore, that we should have something in the nature of a summary, and that the best form of that summary would be that of resolutions. The members will recognise that, while for the most part these resolutions which are here printed have already actually been adopted, in one or two cases there have been verbal alterations made in order to bring them into harmony with the rest, and in one or two other cases there are new ones which were not passed as resolutions, but which were passed as clauses of the Bill. We have now drafted them in the form of resolutions, and I think, perhaps, the best way will be to go through this draft paragraph by paragraph, and if anyone has any amendments to move with regard to it perhaps they will kindly stop me. It is comparatively short, and I think, perhaps, I had better read it slowly through. Does that suit the convenience of the Conference? (Agreed.) "As long ago as 1878 a Royal Commission reported that the British Copyright Law stood in urgent need of revision and amendment. It has not hitherto been possible to give full effect to the recommendations of the Royal Commission owing to the difficulty of the questions involved, but a new importance has been given to the matter by the revision of the International Copyright Convention, carried out by the International Conference held at Berlin in October and November 1908. The revised Convention, which was signed—"

ad referendum should come in there—"by the British delegates on behalf of His Majesty's Government, embodies certain alterations which cannot be put into force in the British Empire without a change in the existing law. The revised Convention was examined, from the point of view of the interests of the United Kingdom, by a Departmental Committee, which reported in December 1909 substantially in favour of the ratification of the Convention." I think it might be well, as there are departmental committees and departmental committees, that we should say "presided over by Lord Gorell" to show that it was an independent committee.

Sir H. LLEWELLYN SMITH: We might call it "a strong departmental committee."

The PRESIDENT: "A strong departmental committee presided over by Lord Gorell, which reported in December 1909 substantially in favour of the ratification of the Convention. Before, however, any action could be taken to carry out the recommendations of the Committee it was necessary to ascertain the views of the other parts of the Empire." Is that the right expression?

Mr. JUST: That includes India.

The PRESIDENT: That is right. Mr. Just, for the Colonial Office, proposes an amendment there. I will just read the paragraph as it stands: "a conference comprising representatives of the Government of India and of all the self-governing Dominions was accordingly summoned." Instead of that the suggestion of the Colonial Office is that it should run, "a conference of representatives of all the self-governing Dominions convened as a subsidiary conference of the Imperial Conference and comprising also a representative of the Government of India." I have no objection to that, it is a matter of form, in fact it more correctly describes it.

Mr. FISHER: Yes.

The PRESIDENT: Shall we accept that?

Mr. FISHER: It is well to state that it is a subsidiary conference.

The PRESIDENT: It makes it of more importance.

Mr. JUST (*to Sir Thomas Raleigh*): I believe you wish to say that instead of "the Government of India" it should be "the Secretary of State for India."

The PRESIDENT: We have not come to that yet—the suggestion is "the Secretary of State" instead of "the Government."

Sir THOMAS RALEIGH: I only want it made consistent throughout, because I was, in fact, appointed by Lord Morley without consulting the Government of India.

The PRESIDENT: We will get to that in a minute; I will read on: "A conference of representatives of all the self-governing Dominions convened as a subsidiary conference of the Imperial Conference, and comprising also a representative of the Secretary of State for India, accordingly met to consider in what manner the existing uniformity of the law on copyright could best be maintained, and in what respects the existing law should be modified, the basis for discussion being the revised copyright convention."

The next paragraph describes those present, and you, Sir Thomas, want to have "the Secretary of State" instead of "the Government of India."

Sir THOMAS RALEIGH: "The Secretary of State."



The PRESIDENT: It will have to be in italics.

Sir H. LLEWELLYN SMITH: Then he ought to come before the Parliamentary Counsel.

Mr. LIDDELL: He ought to come after the representative of the self-governing Dominions, ought he not?

The PRESIDENT: I should think he had better.

Sir THOMAS RALEIGH: If you would prefer to say "the India Office" then I would come in with the Foreign Office and the other Departments.

The PRESIDENT: That would be better—"the India Office." We will put you up with the others.

Sir THOMAS RALEIGH: Yes.

The PRESIDENT: Then "the representatives of the self-governing Dominions were"—I need not read these.

Mr. JUST: I was wondering, Sir Richard Solomon, whether, as you previously represented the Governments of the four States, you would wish an alteration made now.

The PRESIDENT: I was to raise that point, the point being whether, as this is a final draft, you should now be stated to represent the Union of South Africa; in the original draft the different States were all mentioned. I have struck out that in the rough draft, and perhaps you would like to see the suggestion.

Sir RICHARD SOLOMON: You mention the Colonies, I suppose?

The PRESIDENT: I struck them out because I thought your final office absorbed your earlier office.

Sir RICHARD SOLOMON: Yes, I think it had better be as it is here now, "Union of South Africa."

Sir H. LLEWELLYN SMITH: Should not Mr. Fisher be described as Minister of Agriculture?

The PRESIDENT: I think that would be better—"the Minister of Agriculture."

Mr. FISHER: It might be as well, perhaps.

The PRESIDENT: "At the opening meeting the President briefly outlined the reasons which had led to the summoning of the Conference and indicated the chief points to which attention should be directed as follows." Now I want to ask the Conference upon that. It seemed to me rather important that as the reason for the Conference, namely, what occurred at Berlin, and so on, is not stated in this memorandum, that should be stated. There seem to be two alternatives, one to give my speech, such as it was (I would carefully revise it), *in extenso*, or to summarise it, not taking it as a speech, but giving it as our summary of the position. At first it was suggested to me to give it *in extenso*, and then it seemed to me that in that case it would be right that other members of the Conference also should have an opportunity of expressing their general views in regard to this matter. But as a matter of fact,

as we got at once into Committee, I do not think there was any opportunity for any other member of the Conference to express his general views, and therefore it struck me that I might summarise what I said instead of putting in any speech.

Mr. FISHER: I hope you will summarise it pretty fully.

The PRESIDENT: By summarising I really meant giving it, but not as a speech.

LORD TENNYSON: You should give it.

The PRESIDENT: The question is whether I should give it as a speech or as a summary.

Mr. FISHER: I think you might give it as a speech.

The PRESIDENT: As the official opening?

Mr. FISHER: Yes.

The PRESIDENT: I am in your hands about that.

LORD TENNYSON: It is very full and very good.

The PRESIDENT: I do not know about that.

Sir WILLIAM HALL JONES: As a matter for the future.

The PRESIDENT: You think that, on the whole, it should come as the official introduction; that is what it comes to.

Mr. FISHER: It is really the only explanation we have.

The PRESIDENT: "The Conference then resolved itself into Committee for the discussion of the subject in detail. Seven meetings were held, and after full discussion the following resolutions were agreed to unanimously." Now, in reference to that I would like to observe that I have endeavoured to classify these resolutions as far as I could under various heads, but I am quite open to any suggestion as to their order, or whether they are properly classed, or whether the headings given are appropriate. This is only, as I say, a rough draft, and open to any criticism, but what I had in my mind was to make it clear that there were various points in connection with this matter—one "Ratification," one "Imperial Copyright Law," one the question of persons entitled to copyright, one in reference of course to the foreign countries and Orders in Council, and finally the various explanations, reservations, and so on; and I have endeavoured to classify them accordingly. I do not know whether that general proposition would meet the view of the Conference as the best method of making it clear. I am quite open to any suggestion; I am not wedded to this at all. What do you think, Mr. Fisher?

Mr. FISHER: I think this makes it very clear.

The PRESIDENT: That was my object, of course.

Mr. FISHER: It has brought order out of what was perhaps a little chaotic in our proceedings.

The PRESIDENT: It has not been a very easy job; thanks to Mr. Phillips it has been comparatively easy.



Mr. FISHER: I think it is very clear.

The PRESIDENT: May I take it as a basis?

Mr. FISHER: I think it covers the whole.

The PRESIDENT: Then I will read them one by one, and I will be glad if anyone will kindly stop me at any moment if there is any point to raise: "*Ratification of Revised Convention*" will be the heading of this. "(1) The Conference, having considered in substance the revised Copyright Convention, recommends that the Convention should be ratified by the Imperial Government on behalf of the various parts of the Empire, and that with a view to uniformity of International Copyright any reservations made should be confined to as few points as possible. No ratification should, however, be made on behalf of a self-governing Dominion until its assent to ratification has been received; and provision should be made for the separate withdrawal of each self-governing Dominion." I think that really covers all the positions as regards ratification.

Sir H. LLEWELLYN SMITH: That is, of course, textually the resolution passed.

The PRESIDENT: Yes.

Sir WILLIAM HALL JONES: The only question with me is the transposition of 1 and 2. It seems to me that it would be nicer if number 2 became number 1.

The PRESIDENT: In the first draft we had it so, but what struck me was that we are met here largely because of the Berlin Convention; if it had not been for the Berlin Convention we probably should not have met here—in fact, we certainly should not have been meeting here; and, therefore, the first thing was whether the Convention as a whole should be ratified. If we said it should not be ratified, I doubt if we could carry the thing much further; I doubt if there would be sufficient pressure for copyright amendment under the existing conditions without ratification, and therefore I put it in the rough draft, which we had the other way first, but I am inclined to think that the plan before you is in the natural sequence. I do not feel strongly upon it. I do not know what other members think.

Mr. FISHER: If that were changed, I think 2, 3, 4, and 5 would all have to come together any way. They are all the Imperial Copyright Laws.

The PRESIDENT: Yes, and I thought that was another reason for putting this first. It is really quite apart from the rest of it; it does not touch the Imperial question, and does not really raise the merits of the details.

Mr. FISHER: The only question is whether number 6, which is also in regard to the Convention, explanations and reservations, should not be classed—

The PRESIDENT: I considered that, but I thought, after all, really the important thing for this Conference is the Imperial question, and, therefore, that that should come as our second step.

Sir WILLIAM HALL JONES: All right, sir.

Sir H. LLEWELLYN SMITH: That heading on page 4 is wrong. We propose to have "Meaning and term of copyright"; it is not "Proposals of revised Convention." We propose to take that title out; they are all references to the law really and not to the Convention.

The PRESIDENT: Shall we just go through them? We can always revert to the order afterwards. "Ratification" is agreed to. I would just like to ask the Conference if they wish me to put each of these formally. Some of these we have agreed to and some we have not. I think we are agreed that the best method of conducting our proceedings is that as far as possible we should put as little as we can formally, and therefore we have only once, I think, put formal resolutions.

I do not know whether you would like me now, as these are coming before us as formal resolutions, to put them formally, or whether we should take them as agreed, as we have done before. Is there any occasion to put them formally?

Sir WILLIAM HALL JONES: I am prepared to take them as they are here down as far as number 6.

The PRESIDENT: I know, but the question is whether they should be put formally.

Mr. FISHER: I do not think there is any necessity for it.

The PRESIDENT: One, I have read. Two, "Imperial Copyright Law": "(a) The Conference recognises the urgent need of a new and uniform Law of Copyright throughout the Empire, and recommends that an Act dealing with all the essentials of Imperial Copyright law shall be passed by the Imperial Parliament, and that this Act, except such of its provisions as are expressly restricted to the United Kingdom, shall be expressed to extend to all the British possessions. Provided that the Act shall not extend to a self-governing Dominion unless declared by the legislature of that Dominion to be in force therein, either without any modifications or additions, or with such modifications and additions relating exclusively to procedure and remedies as may be enacted by such legislature." (I do not think there is any alteration in the wording of that.) "(b) Any self-governing Dominion which adopts the new Act should be at liberty subsequently to go out of the Act, and for that purpose to repeal it so far as it is operative in that Dominion, subject always to treaty obligations and respect for existing rights." I told Mr. Phillips that I did not like the words "go out of"; but I do not know if anyone can suggest better words.

Mr. JUST: "Withdraw."

Sir H. LLEWELLYN SMITH: "Withdraw from" is much better than "go out of."

The PRESIDENT: "Withdraw from the Act." "(c) Any self-governing Dominion which has passed legislation substantially identical with the new Imperial Act should, for the purposes of the rights conferred by the Act, be treated as if it were a Dominion to which the Act applies."

Sir RICHARD SOLOMON: That is not so full as the resolution we passed.

Sir H. LLEWELLYN SMITH: We did not pass a resolution; we approved the clause, which is long and complicated.

Sir RICHARD SOLOMON: And more satisfactory too, I think.

The PRESIDENT: Would you like to have the clause?

Sir RICHARD SOLOMON: It was sub-clause 3; I have not got the clause here that we passed at the time.

Mr. LIDDELL: It is clause 26 (2).

*Copies of the new Draft Bill were handed to the members of the Conference.*

The PRESIDENT: It is Clause 26 (2). "If the Secretary of State certifies by notice published in the London Gazette, that any self-governing Dominion has passed legislation substantially identical with this Act, except for the omission of any provisions which are expressly restricted to the United Kingdom, or for such modifications as are verbal only, or are necessary to adapt the Act to the circumstances of the Dominion, or relate exclusively to procedure or remedies, or to works first published within, or the authors whereof are resident in the Dominion, then, whilst such legislation continues in force, the Dominion shall for the purposes of the rights conferred by this Act be treated as if it were a Dominion to which this Act extends."



Sir RICHARD SOLOMON: I see you retain that in the Bill—then I do not mind. I thought you were altering the clause in the Bill.

Sir H. LLEWELLYN SMITH: In this summary of resolutions we have simplified things a good deal, but still they ought substantially to correspond.

The PRESIDENT: The last word ought to be "extends" instead of "applies." Sir Richard, what is your point?

Sir RICHARD SOLOMON: I remember the clause which was passed. I pointed out the particulars in which it was a departure from the Imperial Act.

Sir H. LLEWELLYN SMITH: I think we had better expand it a little.

The PRESIDENT: I do not see any harm in putting in Clause 26 (2); that makes it clear.

Mr. LIDDELL: Putting in the exceptions.

Sir H. LLEWELLYN SMITH: It is putting in the exceptions really.

Sir RICHARD SOLOMON: "Substantially identical" is very vague.

The PRESIDENT: It had better read "any self-governing Dominion which has passed legislation substantially identical with this Act," and then give the expansion of it as it stands in the clause, "should for the purposes of the rights conferred by the Act be treated as if it were a Dominion to which the Act extends." Is that agreed to be substituted? [*Agreed.*] I might just point out the difference in wording between the clause in the Bill and this (c) would be that instead of the words "If the Secretary of State certifies by notice published in the London Gazette that any self-governing Dominion has passed legislation" it would run "any self-governing Dominion which has passed legislation."

Sir H. LLEWELLYN SMITH: We can improve that a little at the bottom by omitting: "while such legislation continues in force."

The PRESIDENT: We will have it expanded. Then: "(d) A self-governing Dominion which neither adopts the Imperial Act nor passes substantially identical legislation, shall not enjoy in other parts of the Empire any rights except such as may be conferred upon them by Order in Council, or within a self-governing Dominion, by order of the Governor in Council." (I think we have accepted those words before.) "(e) The Legislature of any British Possession (whether a self-governing Dominion or not) to which the new Imperial Act extends should have power to modify or add to any of its provisions in its application to the Possession, but, except so far as such modifications and additions relate to procedure and remedies, they should apply only to works the authors whereof are resident in the Possession, and to works first published in the Possession." There are a good many "Possessions" in that.

Sir H. LLEWELLYN SMITH: We might say "therein" instead of "in the Possession."

The PRESIDENT: Mr. Fisher, have you anything to say on that?

Mr. FISHER: I was only asking whether this is in accordance with the procedure of the Colonial Office—the word "Possession." I think it is in accordance with your usages, is it not, Mr. Just?

Mr. JUST: Yes, the word "Possession" here includes everything.

Sir RICHARD SOLOMON: It is not an expression I like much.

Sir WILLIAM HALL JONES: Can we find another word?

Mr. JUST: I am afraid it is very difficult to find another word.

Mr. FISHER: It is the King's Possessions.

The PRESIDENT: However, that is the technical term used in the Colonial Office.

Mr. FISHER: I only wished to find out whether it was the technical term used in the Colonial Office.

Mr. JUST: Yes, it is.

Mr. LIDDELL: It is a technical term used in Acts of Parliament.

The PRESIDENT: I think, Mr. Fisher, you have something to bring up upon that.

Mr. FISHER: No.

The PRESIDENT: It was only if we took them in different order.

Sir RICHARD SOLOMON: I see in some of these clauses you use the word "shall," and in others "may": is there anything in that?

Sir H. LLEWELLYN SMITH: I think it will have to be edited.

The PRESIDENT: Also I notice that some of them are "thats" and some not "that's." We sent this out at the earliest possible moment so that you should have it in your hands without being very particular about small matters of that sort. Perhaps you will let us edit it, putting in "shalls" and "shoulds" and "thats" and so on to bring it all into harmony.

*"Repeal of existing Copyright Acts.—*(3) As from the date on which the new Imperial Act takes effect, the existing Imperial Copyright Acts should be repealed so far as regards the parts of the Empire to which the new Act extends. In any self-governing Dominion to which the new Imperial Act does not extend the existing Imperial Acts should, so far as they are operative in that Dominion, continue in force until repealed by the Legislature of that Dominion."

I think those are the words actually in the clause.

Mr. FISHER: Yes.

The PRESIDENT: Then 5.

Sir H. LLEWELLYN SMITH: Have you passed 4?

The PRESIDENT: I was going to say that I think 5 as printed should take precedence of 4; it continues what we are doing as regards who has copyright. The present No. 4, which I should transpose with 5, deals with all these former ones and shows how, by Order in Council, those who in the ordinary way would not be entitled to Imperial Copyright would be brought in. I think the present No. 5 should come first.

Sir H. LLEWELLYN SMITH: On that, Mr. President, I think there is a misleading heading to 4, "Orders in Council"; the heading should have been "International Copyright." That is not intended to refer back to the mode of extending it to Dominions. If you call this—instead of calling it "Orders in Council"—"International Copyright," then do you not think it ought to stand where it is?



The PRESIDENT: No.

Sir H. LLEWELLYN SMITH: It is entirely "International Copyright"; it is Orders in Council granting International Copyright within a Dominion.

The PRESIDENT: Even then I would have 5 first. The present 5 lays down the general proposition: the present 4 is an amendment of that in a sense, or rather it can be amended by Orders in Council. *This* is general and *this* the particular: is not that so?

Sir H. LLEWELLYN SMITH: What will you do with 5 (b)? That is quite incomprehensible without 4. I think "International Copyright" would govern it all really.

Mr. FISHER: I think 5 deals with International Copyright.

The PRESIDENT: Yes, I would cut out both headings and head them both "International Copyright." And 5 will become 4: "The Conference is of opinion that, save in so far as it may be extended by Orders in Council, copyright under the new Imperial Act should subsist only in works of which the author is a British subject or is *bonâ fide* resident in one of the parts of the British Empire to which the Act extends; and that copyright should be lost by first publication elsewhere than in such parts of the Empire." Is the expression "should be lost" regular?

Sir H. LLEWELLYN SMITH: It is better than "forfeited."

Mr. LIDDELL: "Ceases" is the word in the clause.

Mr. FISHER: It does not come into existence.

The PRESIDENT: I thought it had never existed.

Mr. LIDDELL: Yes, it exists directly it is made. A British subject writes a book and the copyright subsists immediately from the moment he has written it, but if he goes and publishes it abroad he loses it.

Sir H. LLEWELLYN SMITH: This point arises from the fact that we are embodying common law copyright in unpublished works, which begins from the moment of production—

The PRESIDENT: You think "should be lost" is the best form? I do not like it.

Mr. TEMPLE FRANKS: "Should cease" would do.

Mr. LIDDELL: "Cease" is the word used in the Bill.

The PRESIDENT: "Cease" is better.

Mr. LIDDELL: "If first published elsewhere."

The PRESIDENT: I think that is better: "(b) The Conference considers that, 'if possible' (I will just read it and then explain), 'it should be made clear on ratification that the obligations imposed by the Convention on the British Empire should relate solely to works the authors of which are subjects or citizens of a country of the Union, or *bonâ fide* resident therein; and that in any case it is essential that the above reservation should be made in regard to any self-governing Dominion which so desires.' The resolution we actually passed was as follows; 'The Conference also resolves that the President be requested to represent to the Secretary of State for Foreign Affairs that it should be made clear.' We clearly cannot bring that domestic affair in, and therefore I worded it in this way. I think that is all right, is it not?

Mr. FISHER: I think so.

The PRESIDENT: That is what we desired. Lord Tennyson, do you agree?

LORD TENNYSON: I think so.

Mr. FISHER: We might say "is of opinion that." In the next clause you say "the Conference is of opinion that" and here you say "the Conference considers."

The PRESIDENT: Yes, we had better have "is of opinion."

Mr. FISHER: Below we have "is of opinion."

The PRESIDENT: We had better have it all through "is of opinion" where we express that view. Now 4—the present 4 as printed will now become 5—"His Majesty" (this is the one applying to the United States) "should have power to direct by Order in Council that the benefits of the new Imperial Act shall be granted to the works of authors, subjects or citizens or residents in a foreign country, and to works first published in that country: Provided that in respect to such a foreign country, His Majesty shall be satisfied that the foreign country in question has made proper provision for the protection of British subjects entitled to copyright." The only thing is, should that be "shall" or "may" in the third line?

Sir H. LLEWELLYN SMITH: He directs that the benefits shall be granted. I do not think we need do it by a proviso. It is very complicated—"and to works first published in that country."

The CHAIRMAN: What is the number of the clause, Mr. Liddell?

Mr. LIDDELL: Thirty.

The PRESIDENT: It is a very long clause; we must summarise it as best we can.

Mr. TEMPLE FRANKS: It wants rather "in any case" so as to get rid of the proviso. I was suggesting it should read "works first published in that country in any case where His Majesty, &c."

The PRESIDENT: Yes, we do want those words.

Sir H. LLEWELLYN SMITH: You would simplify it very much if you left out in the proviso the words "in respect to such a foreign country," which are pure surplusage: "provided that His Majesty shall be satisfied that the foreign country in question has made." You do not want "in respect to such a foreign country"; it simply repeats the thing.

The PRESIDENT: Perhaps it is as well to have a proviso, it makes it more specific. It would not be granted, except under those conditions.

Sir H. LLEWELLYN SMITH: "Provided His Majesty is satisfied."

Mr. LIDDELL: Do you not want to have in some reference to power to impose conditions—formalities?

The PRESIDENT: Is that in the Act?

Mr. LIDDELL: Yes. Proviso (iv.), page 17.

The CHAIRMAN: Yes, the subsection is "the Order in Council may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the Order." That ought to be brought in.

Sir H. LLEWELLYN SMITH: I thought if we said "with or without conditions" it would be enough for the resolution.



The PRESIDENT: Just read it.

Sir H. LLEWELLYN SMITH: "His Majesty should have power to direct by Order in Council that the benefits of the new Imperial Act should be granted with or without conditions to the works of authors, subjects or citizens or residents in a foreign country, or to works first published in that country: Provided that His Majesty is satisfied that the foreign country in question has made proper provision for the protection of British subjects entitled to copyright."

The PRESIDENT: Is the wording of that agreed?

Mr. FISHER: I think you should put in the word "of" before "or residents"—"shall be granted to the works of authors, subjects, or citizens of or residents in a foreign country."

Sir H. LLEWELLYN SMITH: "Subjects or citizens of or residents in." You want the "of" in.

Mr. LIDDELL: You might put it "being subjects or citizens."

Sir H. LLEWELLYN SMITH: It will not read as it is; it is ungrammatical.

Mr. FISHER: I think your suggestion is the best one, Mr. Liddell.

The PRESIDENT: What is your suggestion, Mr. Liddell?

Mr. LIDDELL: "Of authors being subjects, or citizens of or residents in."

The PRESIDENT: In reference to this there is one point I was discussing with Sir Hubert yesterday, and it is this, that this Act comes into force on a certain date. It is quite clear that if we can come to an arrangement with America we do not want, if we can help it, to have a difficulty there, and therefore this clause enables us to negotiate. That is the object of it. At the same time it is also clear that negotiation of that sort would take a considerable time, and it would clearly be very much to the detriment of the authors here and generally to the copyright position, if there was any interval between the Act coming into force and the new Order in Council; that is to say, the agreement with America might drop or might be jeopardised, and I was suggesting to him that something in the nature of a clause extending any existing arrangements for a year or something of that sort would be advisable. His view was that this Act in any case would not come into force for some considerable time after it was passed, and that that might give time, but I think a year is the shortest time we should put in.

Sir H. LLEWELLYN SMITH: On the other hand, it is always very easy to issue an Order in Council, giving the benefits temporarily pending negotiations; you have only to put the United States in and you can always revoke the Order in Council. If you wish to extend it temporarily, you can do it quite easily in the Order in Council.

The PRESIDENT: What I want it for are two things. In this matter I think you may have some difficulty with America. I do not want therefore to do anything that would be likely to irritate them, or rather, I want to smooth the position as far as possible, and I think it might to a certain extent do that if we put in the specific period of a year or something of that sort. Further, although it is quite true that although a temporary Order in Council might meet the difficulty during the time, there might be some feeling of unrest among authors as to what was to happen, and I think it rather important that, at all events for 12 months after the Act is passed, there should be no question that the old system should continue in regard to International Copyright in a non-union country, and during that interval the fresh negotiations could take place. I think it is important that there should be something, and what I suggested (the drafting is very bad) was, coming at the end of (b): "Provided, however, that all existing treaties or arrangements in regard to copyright shall continue for 12 months after the passing of the Act."

Mr. LIDDELL: There is no treaty with America.

The PRESIDENT: It is an arrangement.

Mr. LIDDELL: No.

The PRESIDENT: Well, it is an arrangement in this sense, that Lord Salisbury takes the Law Officers' opinion as to whether we came under the conditions of the American Act as to residents and so on, and they say we do. Lord Salisbury thereupon writes to the American Ambassador, and says, "we do come under this condition," and thereupon the President says that the proclamation of this clause shall extend to this country. I do not say it is a treaty, but it is an arrangement.

Sir H. LLEWELLYN SMITH: No.

The PRESIDENT: There is some technical term, is there not?

LORD TENNYSON: I think the authors under the circumstances might prefer a temporary Order in Council.

The PRESIDENT: You think they would.

LORD TENNYSON: Yes.

The PRESIDENT: I thought it might give rise to some feeling of disturbance.

Mr. LAW: Is there not a difficulty in passing a temporary Order in Council under the new Act, because His Majesty would have to be satisfied that the country in question had made proper provision, and it brings the matter up again for mature consideration? If you had a temporary Order and dropped it because something had not been done, it would show that we had really acted *ultra vires* in passing the Order.

Mr. LIDDELL: No. If you look at the clause, it is "before making an Order in Council under this section in respect of any foreign country His Majesty shall be satisfied that that foreign country has made such provisions, if any, as it appears to His Majesty expedient to require for the protection of persons entitled to copyright."

Mr. FISHER: That is the clause in the Bill.

Mr. LIDDELL: Therefore if His Majesty has not thought fit to require any provisions to be made the Order in Council would be *intra vires*.

The PRESIDENT: I think there is something in this point, because it seems to me that this might occur, that America might not at the moment fully satisfy the conditions of these various clauses and yet, in the course of negotiations in a few months (it might be some small point even), there might be a fresh arrangement come to. A provisional Order in Council of that sort would be carried out unless these conditions were satisfied, and it would take some time to find out if they were. I do not see myself any objection in principle to the interval. This has been going on for many years. The interval cannot do anybody any material damage. The Order need not necessarily be for a year. This would be subject to its being superseded by an Order in Council. I think that ought to be added, but supposing an Order in Council has not been issued, pending the Order in Council the existing state of things should continue. Pending the Order in Council, surely there must be some words which would cover our position in America.

Mr. LIDDELL: The present arrangement depends on the existing legislation; you are wiping that out.

Mr. TEMPLE FRANKS: As the President says, with regard to the Dominions you keep the present legislation in force for certain purposes if they do not adopt the Act. Could you do that in this case in the same way, and say that until such Orders



have been made all existing arrangements that have been made under existing legislation should continue in force?

Sir H. LLEWELLYN SMITH: It would not cover it, because it is not an arrangement; the words would not cover it.

The PRESIDENT: Do you mean to say there is no word which would cover it?

Sir H. LLEWELLYN SMITH: The words which would cover it would be to say that "no country which at the date of the passing of the Act enjoys copyright in the United Kingdom or the British Empire shall lose it for the space of 12 months." You could say that, and it would cover everything.

The PRESIDENT: Pending the issue of an Order in Council.

Sir H. LLEWELLYN SMITH: No, because the Order in Council is the thing giving the copyright, and if they are to enjoy everything pending the issue, they would enjoy it interminably. It would have to be for a period. I think that would do it.

Mr. LIDDELL: They enjoy it by reason of publishing at the present moment.

Sir H. LLEWELLYN SMITH: We give them the benefits of the present Act.

Mr. LIDDELL: They get their existing rights by publishing in England or in the United Kingdom, and you gain nothing under this Bill by publishing in the United Kingdom. That is the difficulty. You lose something by publishing elsewhere, but you do not gain anything by publishing here.

Sir H. LLEWELLYN SMITH: You will have to look the thing through very carefully and see how a provision like that would work into the structure of it.

The PRESIDENT: We can have this drafted if it is generally agreed. I gather that Lord Tennyson is rather against the interval being necessary. What do you think, Mr. Fisher?

Mr. FISHER: I was rather thinking on the lines of your proposition that there should be a proviso that any existing arrangement should continue in force until a new Order in Council had been issued. Before you read it I had a little of that in my mind, but Mr. Liddell's suggestion that there is nothing of the nature of an arrangement, certainly nothing in the nature of a treaty, is perhaps a little of a stumbling block.

Mr. LIDDELL: There would be no difficulty in putting in the resolution something to the effect that it would be advisable to preserve existing arrangements.

Mr. TEMPLE FRANKS: They might be allowed to have the same privileges which they now enjoy.

Sir H. LLEWELLYN SMITH: That is, the old privileges mixed up with the new Act. I think you would have to give them the new privileges.

Mr. TEMPLE FRANKS: I do not see how you could do that very well, because it would upset the whole of the practice between the two countries, as no publication would then be necessary. We want rather to tie them down, and to say: "All we can give you now is not the extended benefits of this Act, but the particular limited rights which you have got now."

Mr. FISHER: Another question arises in my mind with regard to this paragraph. It is "that the benefits of the new Imperial Act shall be granted." Should there not be a modification of that to this effect, "that the benefits of the new Imperial Act, or

"such portion of them as may be defined in the Order in Council, shall be granted to the works of authors"? So that you need not give the whole benefits if you do not care to.

The PRESIDENT: I think that should certainly be so.

Mr. FISHER: It seems to me that would be advisable.

Mr. LAW: There is one matter with regard to America I should like to point out, and that is that the privileges we have obtained in America as the result of that proclamation were obtained by a statement that the United States citizens enjoyed the same rights as British subjects in regard to the obtaining of copyright, but that right which the Americans enjoy is not derived from Orders in Council but from the state of our own law, which provides that any one obtains copyright by first publication in this country. Therefore I do not see how the rights of the American author would be preserved by saying that the Orders in Council would continue in force. I am not quite sure whether that could be met.

Mr. LIDDELL: There are no Orders in Council respecting America.

Mr. LAW: Exactly, there is no Order in Council respecting America; so that if you want to preserve or retain, subsequently to the passing of the new Act, the privileges or rights the Americans enjoy, it must be by some other means expressed in the Act.

Sir H. LLEWELLYN SMITH: Surely you could have a temporary clause authorising distinctly a temporary Order in Council for a period not exceeding 12 months.

Mr. LIDDELL: Yes.

Sir H. LLEWELLYN SMITH: Without conditions, so that you could do it to gain time.

The PRESIDENT: Not exceeding 12 months.

Sir H. LLEWELLYN SMITH: That perhaps would be the simplest thing apart from the satisfaction of conditions.

Sir WILLIAM HALL JONES: Does not the date of the coming into operation of the Act meet the point you are mentioning? In the 39th clause, sub-section 2, it says, "This Act shall, in the United Kingdom, come into operation on the 1st day of July 1911." Does not that give time, for instance, for the Americans to consider the question and say what action they are to take?

The PRESIDENT: I do not know that I have considered the date on which it is to come into operation.

Sir WILLIAM HALL JONES: You have fixed it by some date here.

The PRESIDENT: I do not know when the draughtsmen thought that this Bill was going to be passed, but I think it would be well that it should be understood on both sides that there would be no immediate change, that the question would be carefully considered and be the subject of negotiations, and I do not think, if I may say so, that the time the Act came into force would quite apply to that. I think it would give stability to the existing state of things; one does not wish to disturb that suddenly. I think the suggestion now made is a good one, that there should be a temporary clause providing, as one very often does in these Bills, for an interval of 12 months, and that the temporary provision would disappear at any moment if an Order in Council was issued.

Sir RICHARD SOLOMON: I think that would be very good.

Mr. TEMPLE FRANKS: But if the temporary provision was one extending the benefits of the Act to the United States, then having once given them the wider



benefits it would be extremely difficult to go back; in the meantime also rights of authors, in respect of copyright without formalities or without publication of any kind, would have arisen.

The PRESIDENT: It is the existing rights or law that I should continue.

Mr. TEMPLE FRANKS: They are obtaining copyright in England now by publication and so on, and there will be a transition period in which they will still want to go on obtaining copyright somehow.

The PRESIDENT: That would be a good argument for hanging up your negotiations and getting out an Order in Council, and that could easily be met. The Act will not come into force for six months.

Mr. TEMPLE FRANKS: I am pointing out the difficulties of having a wider legislation and then going back. The difficulties bring one back to the proposition that they should only be allowed to have their existing rights under the existing legislation.

The PRESIDENT: That is what I should have liked, but I see a difficulty about that.

Mr. TEMPLE FRANKS: If that could be done, it would seem to be the most reasonable thing.

Sir WILLIAM HALL JONES: You might postpone the operation of the Act for such a time as would permit of negotiations taking place.

The PRESIDENT: That would be to a certain extent a weapon in the hands of the Americans.

Sir WILLIAM HALL JONES: No. You could say 6 or 12 months, you would not go beyond 12 months, and you might say 9 months, you might fix the date after the passing of the Act, and that would give an opportunity for negotiation. If you make an express provision for carrying on what now most people object to, that is, that they are taking all advantage of the copyright law without coming within its provisions, I think it is going to make trouble.

LORD TENNYSON: Have you got the date in the manufacturing clause? It ought to be the date of the first reading of the Bill to prevent fraud.

Sir H. LLEWELLYN SMITH: Yes. It is not in the resolutions.

LORD TENNYSON: Is it in the Bill?

Sir H. LLEWELLYN SMITH: Yes.

The PRESIDENT: You are talking of the top of page 14; we have put the date in there, but we should have left the date blank. It would be the passing of the Act; not the Act coming into force, but the passing of the Act.

Mr. LIDDELL: The introduction of the Bill.

The PRESIDENT: It would be the introduction of the Bill. It would not affect the question we are on now, as to whether the Act itself should be brought into immediate operation or not. I am bound to say I still am rather strongly of opinion that we ought to have something in the nature of a temporary provision, for the two reasons I have given. You want to show that we are not doing this in an unfriendly spirit to America, which I really think we must show as far as we can; and in the second place we want to make the authors feel on both sides that they have permanency, and so on. An Order in Council is a matter which would take some time, and meanwhile they would not be disturbed or suffer.

Mr. TEMPLE FRANKS: Would you make it a reasonable time for negotiation, and say, "Where under existing legislation a foreign country enjoys rights of copyright in this country, under whatever conditions it may be, such rights shall continue for such reasonable time as will allow of negotiation"?

The PRESIDENT: No, I do not think that would do, because that would give a tremendous weapon to the Americans.

Mr. FISHER: It would cause delay.

Mr. TEMPLE FRANKS: Yes, it would, unless that reasonable time were fixed by our own side.

The PRESIDENT: I now take it that we may arrive at something like a purely provisional clause which, after further consideration from the draughtsmen, might be inserted, Sir William.

Mr. LIDDELL: Yes.

The PRESIDENT: Is there any advantage in delay?

Sir H. LLEWELLYN SMITH: The advantage is in order to arrange the Orders in Council.

The PRESIDENT: Yes, if you have your temporary provision.

Sir H. LLEWELLYN SMITH: I would much rather bring the whole thing into force if we could. I do not think there would be any difficulty about the Order in Council.

The PRESIDENT: We might allow six months for the period.

LORD TENNYSON: Why should it not come into force at once? It would be much more convenient to publishers and authors.

Sir H. LLEWELLYN SMITH: I do not think it could. Besides the Imperial Parliament you have to see what the Dominions are to do.

The PRESIDENT: I think we had better let them have the chance.

Sir H. LLEWELLYN SMITH: You should not have a patchwork business. I think there must be an interval at least sufficient to enable any self-governing Dominion either to assent to the Act or to pass substantially similar legislation. That would make a delay necessary.

Mr. LAW: At least a year. You cannot hurry these things.

Sir H. LLEWELLYN SMITH: I presume it would not take very long.

Mr. FISHER: If you take Australia it would take longer, perhaps, but I think six months would do very well. Would not that period be quite sufficient for the negotiations you speak of?

The PRESIDENT: It might or might not. It just depends on how America takes this thing.

Mr. FISHER: It would be an incitement to bring negotiations to a head.

The PRESIDENT: I should think so. You would not be inclined to give in addition to that some temporary power of perhaps meeting it by a temporary



Order in Council. I do not like that, but I think it is as well to give a little elasticity if necessary.

Mr. FISHER: I think the clause as it stands now would permit of a temporary Order in Council. Mr. Temple Franks' idea is one in which I think there is some force, that if you do pass a temporary Order in Council granting the rights, it will be more difficult to take them away.

Mr. LIDDELL: Not if your Order in Council was expressed to last for only a year.

The PRESIDENT: But you must remember that, supposing there is no difficulty in negotiation at all, except the ordinary difficulties, it would be comparatively easy to arrange for that six months. The only question which would arise would be, if there were some difficulties in negotiating with the Americans and the two sides not being able to agree, and therefore, perhaps, being in a certain state of irritation, then you want your temporary Order in Council. I do not think that would do, because your temporary Order in Council would give them benefits which you might wish to withdraw from them in order to exercise pressure on them to bring them to terms. I think if you suddenly gave them these benefits, it would not facilitate negotiations or help our position.

Mr. FISHER: It would weaken your position.

Mr. TEMPLE FRANKS: You merely take power to extend any existing rights they have got by Order in Council for such time as the Secretary of State—

The PRESIDENT: That is my suggestion, but I understood you thought it was not practicable.

Sir H. LLEWELLYN SMITH: I thought it would be complicated.

Mr. TEMPLE FRANKS: Not the rights of this Act, but the existing rights under the existing legislation.

The PRESIDENT: That was my original proposition, that all existing rights with regard to copyright should be continued. Will you look at that, Mr. Liddell, and see if in addition to the six months' delay in the Act coming into force you should have something, in the event of that six months not being sufficient, which would give them existing rights and nothing more?

Mr. LIDDELL: You could easily have a delay of 12 months, and bring it into force earlier by Order in Council.

Mr. LAW: That seems really quite sufficient, because if the Act does not come into force for a year after it is passed there is a delay of a year, and no positive provision.

Mr. JUST: I think this would also meet Sir William Hall Jones' view, because six months would hardly be sufficient.

Sir WILLIAM HALL JONES: Would it not be best to do it the other way and let it come into operation in six months but delay its operation by Order in Council in such cases as it was found to be necessary? Are there any precedents for bringing an Act into force by an Order in Council?

Mr. LIDDELL: There are.

Sir WILLIAM HALL JONES: The whole Act?

Mr. LIDDELL: Yes.

The PRESIDENT: Some of the Dominions might agree to the lengthening of the time and others might wish it shortened. I do not know whether you heard that suggestion, Mr. Fisher. It is this, that the Act shall not come into force for a year, but

at any moment by Order in Council it could be brought into force at an earlier period. That would have two advantages. It would give a proper time for the Dominions to bring themselves into line according to whatever conclusion they come to. It would also give time to carry out negotiations with America. If both these things were satisfactorily settled they could be brought into force in three months. It gives a margin of time without continuing the existing provisions.

Mr. FISHER: I see no objection to that at all.

LORD TENNYSON: The shorter time you give Americans in bargaining the better you will be able to cope with them.

The PRESIDENT: I am not so sure of that; it would not do to have no interval.

LORD TENNYSON: I do not see any objection to that.

The PRESIDENT: We can make it as short as we like.

Mr. FISHER: It would be in the hands of the Government.

The PRESIDENT: Will you draft something on those lines? The next is 5.

Mr. FISHER: Will you excuse me one moment. Did you make that change I suggested in 4?

The PRESIDENT: Yes.

Mr. FISHER: "The benefits of the new Imperial Act or such portion of them as is defined in the Order in Council."

Mr. LIDDELL: What I had was "or any part thereof."

Mr. FISHER: Then the other point was whether the second part of that resolution should not be a proviso.

The PRESIDENT: We are making it as a proviso.

Mr. FISHER: It is not so printed here.

The PRESIDENT: You mean "Provided that His Majesty should be satisfied."

Mr. FISHER: No, that "His Majesty shall have power to direct by Order in Council that the benefits," and so on, and then, "provided that Orders in Council granting the benefits of the Act within any self-governing Dominion should be made by the Governor in Council of that Dominion." The first part of it rather appears as if His Majesty should have the power, or would have the power, to do it for every part of the King's Dominions, and I think that latter part ought to be a proviso.

The PRESIDENT: There will be two provisos then—"Provided also"?

Mr. FISHER: Yes: "Provided also that Orders in Council granting the benefits of the Act within any self-governing Dominion should be made by the Governor in Council of that Dominion."

Sir H. LLEWELLYN SMITH: Do you not want the words "to a foreign country" in the first line of the proviso? We have already dealt with the question of the Orders in Council in respect of the self-governing Dominions on the previous page granting the benefits of the Act to a foreign country within any self-governing Dominion.

The PRESIDENT: It was brought up, you will remember.



Mr. FISHER: "Provided that Orders in Council granting the benefits of the Act to a foreign country within any self-governing Dominion should be made by the Governor in Council of that Dominion."

Sir H. LLEWELLYN SMITH: Before you pass from number 5 there were some words I was speaking to Mr. Liddell about: "His Majesty is satisfied that the foreign country in question has made proper provision for the protection of British subjects entitled to copyright." That also comes in the Bill, and I was just suggesting to Mr. Liddell that those words might be a little too narrow for our purpose. It is conceivable, for example, that America, as the result of negotiations, might agree to alter her law, but it might take her a long time to do it, and we might be compelled therefore to refuse to give her rights in the interval. I have not got the words, but I think we ought to have words.

The PRESIDENT: What you mean is, "Has made or is in process of making."

Sir H. LLEWELLYN SMITH: I have not got the exact words, but I think those words are too narrow as they stand. You want some such conditions.

The PRESIDENT: I think it is clear that ought to be done. We have done with 5, which is now 4; next comes number 6, and you will want a new heading for that.

Sir H. LLEWELLYN SMITH: I took 6 by itself, knocked out (a), and simply called it "Meaning of copyright." This is the definition of what copyright means.

The PRESIDENT: Then we will say "Definition of copyright." The words in this definition of copyright are the words of the Bill, are they not?

Mr. LIDDELL: They vary a little; it is shortened.

The PRESIDENT: "The Conference is of opinion that, subject to proper qualifications, copyright should include the sole right to produce or reproduce a work, or any substantial part, in any material form whatsoever and in any language, to perform, or in the case of a lecture to deliver, the work, or any substantial part thereof in public, and, if the work is unpublished, to publish the work, and should include the sole right to dramatise novels and *vice versa*, and to make records, &c., by means of which a work may be mechanically performed." That is supposed to cover everything, and I suppose it does. Do you agree to that? [Agreed.] Now you want another heading.

Sir H. LLEWELLYN SMITH: "Term of copyright" is the heading, and that takes the whole of the next page, and I call that 7 and not 6 (b). It would be 7 (a).

The PRESIDENT: Perhaps I might just read through these paragraphs which refer to this point, Sir William, and then we will discuss it: "The Conference is of opinion that in order to make possible the abolition of formalities, and to ensure that the whole of an author's works fall into the public domain simultaneously, the term of copyright ought to be based on the life of the author with the addition of a certain number of years." I understand we are all agreed upon that.

Sir WILLIAM HALL JONES: Yes, I accept that.

The PRESIDENT: "The Conference understands that the only term of copyright on which it is possible to obtain international uniformity is life and 50 years, and they attach great importance to the attainment of such uniformity."

Sir H. LLEWELLYN SMITH: We have made the Conference single in one and plural in another.

Mr. TEMPLE FRANKS: May I go back to the first for a moment: "Abolition of Formalities"? You have not abolished formalities altogether. I do not know whether it ought to be explained there what formalities mean in this connection.

The PRESIDENT: "In order to make possible the general abolition of formalities."

Mr. TEMPLE FRANKS: It is rather difficult to say; the formalities which are meant are of a certain kind—not the formalities connected with procedure. I do not know whether there is a word which we could put in.

The PRESIDENT: I think if you put "formalities" in inverted commas it would cover it.

Mr. LIDDELL: "As a condition of copyright."

The PRESIDENT: We are not abolishing them absolutely, you want some qualifying term.

Mr. TEMPLE FRANKS: Yes.

Sir H. LLEWELLYN SMITH: "In order to make it possible to dispense with formalities."

Mr. TEMPLE FRANKS: "Dispense as far as possible with formalities as a condition of copyright." That is what you want to get in.

The PRESIDENT: That is very good—that is a very good phrase: "Dispense as far as possible with formalities as a condition of copyright." That will do.

Sir H. LLEWELLYN SMITH: We are not insisting on any formalities as a condition of copyright, so you ought to leave out "as far as possible" there—"in order to dispense with formalities as a condition of copyright." I do not think we have any formalities as a condition of copyright.

The PRESIDENT: Then the next is: "They further understand that the enactment of a term of copyright which in any case could be less than that which at present subsists would introduce grave complications in applying the new Act to existing works. Having regard to all these considerations, and especially to the importance of securing international uniformity, the Conference recommends that, subject to the conditions hereafter indicated, the term of copyright should be life and 50 years." You can take the conditions afterwards.

Personally, as I have informed the Conference more than once, my mind is an open one with regard to this matter. I have some doubt as to the length of time, but I am bound to say that the more I have looked into it the more I think it is essential, if we are to make an alteration in our law, that we should adopt this term—I am not sure on the ground of justice, but I am quite clear on the ground of uniformity—and to adopt any other term would really rob the proposed Copyright Act, the Imperial Act, very much of its advantages. Therefore, I am prepared to accept this proposal, and to recommend it to my colleagues. Of course, it would enormously strengthen my hands in reference to that if this Conference agreed, and especially if they unanimously agreed, to the suggestion on the ground of uniformity or any other ground.

I do not know, Sir William, whether you have had an opportunity of consulting on this matter your Government. Has it enabled you to come round a little more?

Sir WILLIAM HALL JONES: I am sorry to say that I cannot join with the other representatives here. I communicated with my Government, and I told them I thought the period too long. I informed them that the representatives of Canada, Australia, and South Africa were prepared to accept 50 years for the sake of uniformity, and the reply I received was that in their opinion the proposal was too long, and they concurred in my voting against it.

Mr. LAW: What period do you propose?

Sir WILLIAM HALL JONES: I prefer the present period.



The PRESIDENT: You must have some alteration of the present period if you take life, and we are all agreed upon life.

Sir WILLIAM HALL JONES: I should be going as far as it is possible for me to go by voting for 30 years.

The PRESIDENT: Thirty years is not an advantage in a third of the cases; it is a disadvantage.

LORD TENNYSON: The present copyright is better than the life and 30 years. Have you read Thomas Carlyle's petition to the House of Commons in 1839? It is worth your reading.

Sir WILLIAM HALL JONES: Of course it would be open to pass this, subject to my dissenting. On so important a matter you would feel that you must make some recommendation.

The PRESIDENT: I think so.

Mr. LAW: Are you bound to vote against it, or can you abstain from voting?

Sir WILLIAM HALL JONES: I should have to record my dissent from it. If this is to be signed by the members I could not sign it without saying that I dissented from section 7.

The PRESIDENT: I have not considered the form in which this document should go out to the public. For the moment I was thinking more or less of the position I want to place before my colleagues in the Cabinet, whose assent I have to obtain, and perhaps as regards them I might say that there was one dissentient. I would rather not put it to the vote. I quite understand that you want your dissent from it recorded somewhere, quite properly.

Sir WILLIAM HALL JONES: I should be content that it should be recorded in the minutes here, provided I should be allowed to say afterwards if I chose that I did so dissent.

The PRESIDENT: Do you mean on our ordinary minutes?

Sir WILLIAM HALL JONES: On our ordinary minutes. This is only a summary or memorandum concerning the Conference, and if this is to be signed by the members I should have to express my dissent from section 7. If it goes unsigned or signed simply by yourself as the Chairman as a record of what the Conference has done you would give in that report the substance of the opinions of the majority, and it might be that one, two or three dissented.

The PRESIDENT: That is what I would rather do. I quite understand that you would wish your dissent to be recorded, and it would be on record, and I need hardly say that you would be perfectly entitled to state it to your Government or however you like, but I should prefer for the reasons I have given not to have it recorded in the form of a vote here or to have it recorded in this resolution. The simplest way to meet that would be this. I had put, hoping perhaps against hope, on page 2, "After full discussion the following resolutions were agreed to unanimously," and the best way to meet the difficulty, if I may say so, would be to cut that word "unanimously" out, and then it does not necessarily mean that all these were adopted unanimously.

Sir WILLIAM HALL JONES: I think so.

LORD TENNYSON: I do not see why you should put that in. "The Conference recommends" is quite clear; that implies "the majority" of the Conference recommends.

The PRESIDENT: The "Conference" is all right, and Sir William agrees to that, but I have to state to my Cabinet what occurred, and I wish now to say that we are unanimous on all the other points, especially as regards the Imperial question, which is very important. Now we go back to the wording of it. "The Conference understands": are we plural or singular?

Sir H. LLEWELLYN SMITH: All through we have said "is of opinion"; the only thing is that when we keep to the singular we have to describe the Conference as "it."

The PRESIDENT: "The Conference understands that the only term of copyright on which it is possible to obtain international uniformity is life and 50 years, and they attach great importance to the attainment of such uniformity."

Mr. TEMPLE FRANKS: Is that quite clear? It is probable that is the only term for international copyright.

Mr. PRESIDENT: Surely it is quite clear because the majority have already agreed to 50 years.

Mr. TEMPLE FRANKS: Germany has not, and there is probably little chance of getting Germany to agree.

The PRESIDENT: I do not know; the majority at all events have agreed to 50 years, and our delegates said this in regard to Germany: "As regards the States which have not yet adopted a period of life and 50 years, Italy has adhered to the French proposal of fifty years and the majority have agreed. We have been given to understand that Germany will consider the introduction of a Bill for the necessary extension of their term of copyright, and that the adherence of Great Britain to this period would be a powerful influence in effecting such a result." I do not think this is putting it too strong, because the majority have already agreed to life and 50 years.

Mr. TEMPLE FRANKS: If you say you "understand," you mean that you are really intellectually convinced.

The PRESIDENT: So I am.

Sir H. LLEWELLYN SMITH: You are convinced it will not be possible to get international uniformity on the basis of life and 50 years?

Mr. TEMPLE FRANKS: Yes.

Sir H. LLEWELLYN SMITH: But this only asserts that it will not be possible to get it on any other basis; surely you do not think it possible to get it on any other basis? Countries with life and 50 years already will not cut down the period.

Mr. TEMPLE FRANKS: Quite true.

The PRESIDENT: This was not intended to do any more than say that it was not possible on any other basis without expressing any opinion. If it is not clear—

Mr. TEMPLE FRANKS: I think perhaps it is all right.

Sir RICHARD SOLOMON: Could not you say, "The Conference is of opinion," as in the preceding paragraph? That is our opinion, I think.

Sir H. LLEWELLYN SMITH: It is intended in these two or three paragraphs to say that they understand certain things and have therefore come to this conclusion.

The PRESIDENT: They "understand"; in the other case they come to an opinion on the merits in their own mind. Both in regard to this paragraph and the



next one I am going to read, it is really information before them more than opinion. I should think "understand" would be better. I have struck out that bit in brackets; it is too much detail. Then in the next one there is a clerical error, and I will read it as I suggest it should be: "They further understand that the enactment of a term of copyright which in many cases would be less than that which at present subsists would introduce grave complications in applying the new Act to existing works. Having regard to all these considerations, and especially to the importance of securing international uniformity, the Conference recommends that, subject to the conditions hereafter indicated, the term of copyright should be life and 50 years." Now the two conditions to which we attach importance—we all agree to that—are: "In the case of a work of joint authorship the term of copyright should be the life of the author who first dies and 50 years after his death, or the life of the author who dies last, whichever period is the longer. The Conference is, however, of opinion that if a term of life and 50 years is granted to literary, dramatic,"—we do not want the "however" there now—"musical, and artistic works, it is essential that in the case of published works effective provision should be made to secure that after the death of the author the reasonable requirements of the public be met as regards the supply and the terms of publication of the work, and permission to perform it in public. The recommendation of the Conference as to the term of copyright is conditional on the enactment of some provision of this nature." Now we have to get a new heading.

Sir H. LLEWELLYN SMITH: That ends "The Term of Copyright."

The PRESIDENT: As to these paragraphs 7 (a), (b), and (c), what heading do you propose for them?

Sir H. LLEWELLYN SMITH: This becomes 8, and I propose that this should be called "Abolition of Formalities."

The PRESIDENT: "The Conference is of opinion that no formalities, such as registration, &c., should be imposed as a condition of the existence or the exercise of the rights granted by the new Act. For the purpose, however, of the protection of an innocent infringer no damages should be recoverable if the infringer proves that he was not aware, and had no reasonable means of making himself aware, that copyright subsisted in the work; but every person would be deemed to be affected with notice of the existence of copyright if the proper particulars have been entered in a register established for the purpose. Registration, however, should be optional merely." Mr. Fisher, I should like in that connection (you raised the point last time) to draw your attention to the re-drafting of that clause, because you will remember you wanted to include the Canadian—what clause is it?

Mr. LIDDELL: Six.

The PRESIDENT: Is it all right now? "Provided that if the proper particulars were before the date of the infringement correctly entered in a register established under this Act, or, in the case of a work first published in, or the author whereof was resident in, a British Possession under the law of which a register has been established within that Possession, if similar particulars have been correctly entered in that register, the defendant shall be deemed to have had means of making himself aware that copyright subsisted in the work." That is intended to bring you in, but it is rather an awkward phrase. I do not know how it could be made clearer. The point is "under the law of which a register has been established within that possession." Would you like to look at that clause again and see if any alteration can be made in it? With regard to what we are now considering the resolution covers it, does it not?

Sir RICHARD SOLOMON: Mr. Chairman, what is the use of those words after "Act," or, "in the case of a work first published," because if the Dominion takes over this Act, it applies to any Dominion to which this Act applies?

The PRESIDENT: Mr. Fisher wanted to put it in to make it clear.

Sir RICHARD SOLOMON: And if you do not take that Act, you will have your own legislation or procedure and so forth.

Mr. FISHER: Which words do you mean?

Sir RICHARD SOLOMON: All the words after "Act" down to "register" in the last line but two; leave out all those words from "or" to "if" and the clause would read: "Provided that if the proper particulars were before the date of the infringement correctly entered in a register established under this Act, or if similar particulars have been correctly entered in that register, the defendant shall be deemed to have had means of making himself aware that copyright subsisted in the work."

Mr. TEMPLE FRANKS: "Established under this Act."

Sir RICHARD SOLOMON: Supposing the Act is taken over by the Dominion it is surely supposed to be applied to a register in that Dominion. It is a register under the Act, is it not?

Sir H. LLEWELLYN SMITH: That will not quite do—take the author of a work first published in the United Kingdom, not registered here, and then registered, say, in Australia,—I do not think that ought to affect him after notice. It is only in case it is an Australian work the Australian notice should be sufficient notice. That is the idea of the clause.

Mr. FISHER: This, I think, is necessary, Sir Richard, to make it clear that the registration in Great Britain is not the only registration which could be completed. I think in another part of the Act they have got to register at Stationers' Hall.

Mr. LIDDELL: Seventeen.

Mr. FISHER: In Clause 17, another part of the Act, there is a description of the register, which shall be held to be proof.

Sir RICHARD SOLOMON: Yes.

Mr. FISHER: I think it would be limited to that if there were not some such words in this clause.

The PRESIDENT: As regards the resolution, I think we need not go into detail.

Mr. FISHER: No.

The PRESIDENT: Then (d), "the Conference is of opinion that an original work of art should not lose the protection of artistic copyright solely." I need not read that again, it is the Architecture Resolution word for word. (e) "Existing works in which copyright actually subsists at the commencement of the Act (but no others) should enjoy the same protection as future works, but the benefit of any extension of terms should enure"—I do not care about the word "enure," it is rather affected—"belong to the author of the work, subject, in the case where he has assigned his existing rights, to a power on the part of the assignee at his option either to purchase the full benefit of the copyright during the extended term, or, without acquiring the full copyright, to continue to publish the work on payment of royalties, the payments in either case to be fixed by arbitration if necessary."

Sir H. LLEWELLYN SMITH: You want a title for that: "Application to existing works." The heading for (d) would be: "Inclusion of Architecture and Artistic Crafts."

The PRESIDENT: What title have you found for (f)?



Sir H. LLEWELLYN SMITH: I could not find anything for (f) except "Reservation." The sub-pirate you called it.

The PRESIDENT: We will call it "Reservation." "The Conference is of opinion that it is undesirable expressly to confer rights on the authors of works which themselves infringe the copyright in other works, and that if necessary a reservation to this effect should be made when the revised Convention is ratified." Then what do you call (g)?

Sir H. LLEWELLYN SMITH: It becomes H, and I have called it "Importation of Pirated Copies."

The PRESIDENT: I am rather inclined to have "Miscellaneous" for (f), (g), and (h). (g) "There should be power to stop the importation of pirated copies of a copyright work into any part of His Majesty's Dominions to which the Imperial Act extends. (h) The Conference is further of opinion that it is not desirable to continue the special provisions of the Foreign Reprints Act, at least so far as regards self-governing Dominions." And then somebody has put in (i), "Due provision should be made for the protection of vested interests."

Mr. PHILLIPS: It is supposed to be a summary of that very long clause in the Bill.

The PRESIDENT: Is it worth while putting it in? I see no objection to it; it looks rather nice.

Sir WILLIAM HALL JONES: Do you think it might assist you?

The PRESIDENT: I am not quite sure; I rather think it would be the other way. There is one point on (g) which Mr. Just wants to mention.

Mr. JUST: I thought that perhaps on (g) you should say not only "any part of His Majesty's Dominions to which the Imperial Act extends," but also "in which substantially identical legislation is passed."

The PRESIDENT: The point Mr. Just makes, I understand, is that this would not include what we have included in 2 (c).

Mr. LIDDELL: The whole thing applies to that.

The PRESIDENT: I should have thought it would, where it extends.

Mr. LIDDELL: The self-governing Dominion which passed substantially identical legislation would have, in order to make it substantially identical, to pass legislation prohibiting the importation into that Dominion.

Mr. FISHER: Yes.

The PRESIDENT: You mean "extends" would include all these other cases.

Mr. LIDDELL: Yes.

Sir RICHARD SOLOMON: Would it not do to put "statutory provisions should be made to prevent importation"? I do not quite know whether this is a power to stop—power to whom?

The PRESIDENT: That the importation of pirated copyright works should be prohibited.

Mr. LIDDELL: It is within the power of the owner of the copyright to stop them.

Mr. FISHER: That would have to be under statutory provisions.

Sir RICHARD SOLOMON: It can only be under statutory provisions.

The PRESIDENT: I think we will have to bring in the word "statutory." Do you think there is anything in the other point.

Mr. FISHER: What is the other point?

The PRESIDENT: You are simply saying that this should apply to His Majesty's Dominions as far as the Act extends. Mr. Just was not quite sure whether it would bring under 2 (c) those who do not substantially adopt the Act. I should have thought it did.

Mr. FISHER: It seems to me that the better way to do this would be that any statutes in any part of His Majesty's Dominions should contain provisions to stop the importation, or something like that; so that the Acts of the different self-governing Dominions should embody that principle in them. This would almost mean that the authority should be in this Act.

Sir RICHARD SOLOMON: Yes.

The PRESIDENT: I think we are all agreed on that point; we might leave that to the draughtsmen to carry out.

Then the final paragraph is, "A Draft Bill for the Consolidation and Amendment of the Law of Copyright, embodying the above conclusions, was submitted to and discussed in detail, and generally approved by the Conference." I think we might leave out the word "generally."

Mr. FISHER: I think so.

Sir WILLIAM HALL JONES: I think so.

Sir H. LLEWELLYN SMITH: There is some advantage in the word "generally." As we know, when the thing is published you are bound to find small points in which amendments would be necessary. A general approval is one thing—

The PRESIDENT: I remember why the word was put in. It was raised by Sir Hubert. Undoubtedly, as we go over the draft, we may find small points, not affecting principle, which could not be submitted to you, and therefore if you approve of the draft we shall go on and feel rather more hampered in making ordinary alterations which we are almost bound to make in going through the Bill, and I think therefore "generally" would do.

Mr. FISHER: I suppose you will find that in a Bill of this kind going through the House, you will have certain modifications.

The PRESIDENT: But even before that; this is a draft, and even going through it this morning I could see that there were certain things, not touching any matter of principle the Conference has agreed to, but details and things of that sort, and I am a little afraid it might be held that if we said "approved," we must stick to this draft Bill and not alter it.

Mr. FISHER: I would not wish that.

The PRESIDENT: I would rather have "approved," in a sense, because if it is understood—

Sir WILLIAM HALL JONES: It is restrictive for you.

The PRESIDENT: There is a matter of form which is really raised by what Sir William said in reference to the 50 years. We have passed this as the Report of the Imperial Conference on Copyright. Sir William's point is that if we should sign this he would have to sign with a reservation. He is good enough to fall in



with the view that, if possible, that should be avoided, and therefore, that rather means that we should not put our signatures actually at the end.

Mr. JUST: I think it is sufficiently covered by the names at the beginning. I understand that at the Merchant Shipping Conference there was nothing signed, and, of course, in regard to the Imperial Conference, the proceedings of the Conference are not signed at all.

Mr. FISHER: What was done in the Imperial Conference?

Mr. JUST: It is simply a record of the proceedings of what takes place, without any signatures at all, and, of course, as regards voting, it is not a question of voting in a majority, it is simply that each vote would be recorded for the Dominion it stood for. You cannot overbear by a majority in the Conference at all.

The PRESIDENT: It would be better therefore not to have it signed, but to have this as the report of the Conference.

Mr. FISHER: There has been no other subsidiary Conference, has there?

Sir WILLIAM HALL JONES: Last year, "Defence."

Mr. JUST: Yes, there was the Defence Conference.

The PRESIDENT: That was not signed.

Mr. JUST: There was nothing signed there.

Sir WILLIAM HALL JONES: That was almost wholly confidential, too, was it not?

The PRESIDENT: Yes. I think if that is the view we had better let it appear in this way not signed.

Mr. FISHER: May I ask if it is intended that this memorandum should be published?

The PRESIDENT: Certainly that is the object of having it in this form. As to when it should be published, that is another matter; perhaps we might discuss that matter.

I am sure the Conference would like me to put just a paragraph at the end expressing our thanks to Mr. Keith and Mr. Phillips, our joint secretaries, for their services. Do the Conference wish to go through the Bill again?

Sir RICHARD SOLOMON: Not before luncheon.

The PRESIDENT: Perhaps it would be as well to go through it after luncheon. There are only really one or two small points of any importance, but I am afraid I shall have to go directly afterwards.

LORD TENNYSON: May I read a telegram I have received from the Government of the Commonwealth?

The PRESIDENT: Please.

LORD TENNYSON: "Copyright heads of draft Bill quite satisfactory as far as 'can be judged, no criticisms at present. Will forward suggestions (if any) after 'perusal of full text.' And the cable ends with congratulations on the 'successful result of the Conference.'"

Sir RICHARD SOLOMON: Are we to send this Bill out to our Governments when we get it?

The PRESIDENT: I was just going to ask; what I have in mind is this: I have already been drafting a memorandum to put before the Cabinet, and I wanted to have this final meeting before I circulated it. I really do not know, but I hope they will agree to it. Assuming they agree to it, what I am suggesting in my memorandum, which I think was written at the suggestion of Lord Tennyson, is that although there is no prospect of passing this Bill now, I should introduce it and obtain a first reading, explaining it under the 10 minutes' rule, which gives me the opportunity of saying very much what I have said here, so that it would be before the public, and could be criticised before we can actually introduce it as meaning business.

Mr. FISHER: It will be printed, however, and before the public.

The PRESIDENT: Yes, and I am raising the point on the clauses in the Bill as to what is to be done about the manufacturing clauses; that is to say, people who have been up to now preparing for books, or whatever their works are, falling out of copyright. We have provided for that. That is all right up to the moment I introduce the Bill, but supposing there is a delay for another year, or it may never pass, and how should that be dealt with in the Bill?

Sir H. LLEWELLYN SMITH: I should put in the date if you introduce it now, and if it was hung up you would put down an amendment to alter that date if it hung on too long. On the whole, I think that is the best thing to do.

LORD TENNYSON: I think that is the only thing to do.

The PRESIDENT: Very well. That is as far as my own proceedings are concerned. If my colleagues do not agree, I do not quite know what I shall do. But assuming the proposal goes through, then with reference to your question what would be the view of the other members of the Conference with regard to the publication of this and the draft Bill? I think this should not appear until after the Bill has been introduced; I think I ought to have an opportunity of stating our case first.

Mr. FISHER: Practically, I think you should make this statement on the introduction of the Bill, and then it would be published.

The PRESIDENT: It could be issued with the Bill.

LORD TENNYSON: If it was issued before, it would take away the whole interest from your speech.

The PRESIDENT: What would you desire as regards your Governments if the Bill was introduced? Of course you would send it to them, but do you wish to have it in anticipation of that after we have polished it up and so on?

Mr. FISHER: I would be very glad to have a complete Bill. I expect to go home almost immediately and I would like to have a complete Bill so that when you do introduce it—which might be within two or three weeks—I do not know what your expectations are. I would then have your complete Bill before me at home to use.

The PRESIDENT: If I get assent to the introduction of it we have two or three things to consider.

LORD TENNYSON: I suppose the Colonial Office could forward it to the Governors-General and Governors.

Mr. JUST: I think it would be usual to send such a Bill out as soon as the Board of Trade felt that it could confidentially go out to the Governor-General or to the Governor.

Sir WILLIAM HALL JONES: I think our Governments would expect a copy of the Bill as soon as it can be completed to be sent them confidentially.



The PRESIDENT: As soon as it is passed.

Sir WILLIAM HALL JONES: As soon as it is reprinted in its proper form.

The PRESIDENT: I think I ought to get the assent of the Government to it first, and then I would tell you confidentially that I had got the assent of the Government or *vice versa*. I do not think it ought to go out until after that; otherwise it might lead to a disappointment. I hope I will get it through.

Mr. FISHER: Would your office be able to send to us individually a copy of the finished Bill as soon as you have consulted your colleagues?

The PRESIDENT: Yes, as members of the Conference, clearly you are entitled to it, and officially it would go through the ordinary channels. I do not think that there is any other point, and I do not think there is any need to meet again.

Mr. FISHER: I do not think so.

The PRESIDENT: I think you might meet after luncheon; there are one or two clauses which I think you ought to consider, the drafting of which is to be brought up again.

Mr. FISHER: I would like to finish to-day, if we could.

After a short adjournment.

Mr. FISHER: I beg to move that Sir Hubert Llewellyn Smith take the chair.

LORD TENNYSON: I second that.

Sir H. LLEWELLYN SMITH took the chair.

Mr. FISHER: Mr. Chairman, I beg to move that the Conference wishes before separating to express its appreciation of the able and courteous conduct of its proceedings on the part of the Chairman, the Right Honourable the President of the Board of Trade, which has so much contributed to the satisfactory issue of its deliberations.

LORD TENNYSON: I have great pleasure in seconding that.

CHAIRMAN: It is moved by Mr. Fisher and seconded by Lord Tennyson: "That the Conference wishes before separating to express its appreciation of the able and courteous conduct of its proceedings on the part of the Chairman, the Right Honourable the President of the Board of Trade, which has so much contributed to the satisfactory issue of its deliberations." Those in favour of that? To the contrary? That is unanimously carried.

I shall have great pleasure in conveying this to Mr. Buxton, and I am sure that he would wish me on his behalf to thank the Conference very cordially for that expression of their views, and also to express his appreciation of the way in which he has been supported throughout these proceedings by the representatives of the various parts of the Empire.

## RESOLUTIONS.

### *Ratification of Revised Convention.*

1. "The Conference, having considered in substance the revised Copyright Convention, recommends that the Convention should be ratified by the Imperial Government on behalf of the various parts of the Empire; and that with a view to uniformity of International Copyright any reservations made should be confined to as few points as possible. No ratification should, however, be made on behalf of a self-governing Dominion until its assent to ratification has been received; and provision should be made for the separate withdrawal of each self-governing Dominion.

### *Imperial Copyright Law.*

2.—(a) "The Conference recognises the urgent need of a new and uniform Law of Copyright throughout the Empire, and recommends that an Act dealing with all the essentials of Imperial Copyright Law should be passed by the Imperial Parliament, and that this Act, except such of its provisions as are expressly restricted to the United Kingdom, should be expressed to extend to all the British possessions: Provided that the Act shall not extend to a self-governing Dominion unless declared by the Legislature of that Dominion to be in force therein, either without any modifications or additions, or with such modifications and additions relating exclusively to procedure and remedies as may be enacted by such Legislature.

(b) "Any self-governing Dominion which adopts the new Act should be at liberty subsequently to withdraw from the Act, and for that purpose to repeal it so far as it is operative in that Dominion, subject always to treaty obligations and respect for existing rights.

(c) "Where a self-governing Dominion has passed legislation substantially identical with the new Imperial Act, except for the omission of any provisions which are expressly restricted to the United Kingdom, or for such modifications as are verbal only, or are necessary to adapt the Act to the circumstances of the Dominion, or relate exclusively to procedure or remedies or to works first published within or the authors whereof are resident in the Dominion, the Dominion should, for the purposes of the rights conferred by the Act, be treated as if it were a Dominion to which the Act extends.

(d) "A self-governing Dominion which neither adopts the Imperial Act nor passes substantially identical legislation should not enjoy in other parts of the Empire any rights except such as may be conferred by Order in Council, or, within a self-governing Dominion, by Order of the Governor in Council.

(e) "The Legislature of any British Possession (whether a self-governing Dominion or not) to which the new Imperial Act extends should have power to modify or add to any of its provisions in its application to the Possession; but, except so far as such modifications and additions relate to procedure and remedies, they should apply only to works the authors whereof are resident in the Possession and to works first published therein.

### *Repeal of existing Copyright Acts.*

3. "The Conference is of opinion that as from the date on which the new Imperial Act takes effect, the existing Imperial Copyright Acts should be repealed so far as regards the parts of the Empire to which the new Act extends. In any self-governing Dominion to which the new Imperial Act does not extend the existing Imperial Acts should, so far as they are operative in that Dominion, continue in force until repealed by the Legislature of that Dominion.

### *International Copyright.*

4.—(a) "The Conference is of opinion that, save in so far as it may be extended by Orders in Council, copyright under the new Imperial Act should subsist only in works of which the author is a British subject, or is *bonâ fide* resident in one of



the parts of the British Empire to which the Act extends; and that copyright should cease if the work be first published elsewhere than in such parts of the Empire.

(b) "The Conference is of opinion that, if possible, it should be made clear on ratification that the obligations imposed by the Convention on the British Empire should relate solely to works the authors of which are subjects or citizens of a country of the Union, or bona fide resident therein; and that in any case it is essential that the above reservation should be made in regard to any self-governing Dominion which so desires.

5. "His Majesty should have power to direct by Order in Council that the benefits of the new Imperial Act, or any part thereof, shall be granted, with or without conditions, to the works of authors being subjects or citizens of, or residents in, a foreign country, and to works first published in that country, conditionally on the foreign country in question making proper provision for the protection of British subjects entitled to copyright; provided that Orders granting the benefits of the Act to a foreign country within any self-governing Dominion should be made by the Governor in Council of that Dominion.

#### *Definition of Copyright.*

6. "The Conference is of opinion that, subject to proper qualifications, copyright should include the sole right to produce or reproduce a work, or any substantial part thereof, in any material form whatsoever and in any language, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public, and, if the work is unpublished, to publish the work, and should include the sole right to dramatise novels and vice versa, and to make records, &c., by means of which a work may be mechanically performed.

#### *Term of Copyright.*

7.—(a) "The Conference is of opinion that, in order to dispense with formalities as a condition of copyright, and to ensure that the whole of an author's works fall into the public domain simultaneously, the term of copyright ought to be based on the life of the author with the addition of a certain number of years.

(b) "The Conference understands that it would be impossible to obtain International uniformity on the basis of any other term of copyright than one of life and fifty years, and attaches great importance to the attainment of such uniformity.

(c) "The Conference further understands that the enactment of a term of copyright which in many cases would be less than that which at present subsists would introduce grave complications in applying the new Act to existing works.

(d) "Having regard to these considerations, and especially to the importance of securing International uniformity, the Conference is of opinion that, subject to the conditions hereafter indicated, the term of copyright should be life and fifty years; but that in the case of a work of joint authorship the term of copyright should be the life of the author who first dies and fifty years after his death, or the life of the author who dies last, whichever period is the longer.

(e) "The Conference is of opinion that, if a term of life and fifty years is granted to literary, dramatic, musical and artistic works, it is essential that, in the case of published works, effective provision should be made to secure that after the death of the author the reasonable requirements of the public be met as regards the supply and the terms of publication of the work, and permission to perform it in public. The recommendation of the Conference as to the term of copyright is conditional on the enactment of some provision of this nature.

#### *Abolition of Formalities.*

8. "The Conference is of opinion that no formalities, such as registration, should be imposed as a condition of the existence or the exercise of the rights granted by the new Act.

"For the purpose, however, of the protection of an innocent infringer no damages should be recoverable if the infringer proves that he was not aware, and had no reasonable means of making himself aware, that copyright subsisted in the work; but every person would be deemed to be affected with notice of the existence of copyright if the proper particulars have been entered in a register established for the purpose. Registration, however, should be optional merely.

#### *Inclusion of Architecture and Artistic Crafts.*

9. "The Conference is of opinion that an original work of art should not lose the protection of artistic copyright solely because it consists of, or is embodied in, a work of architecture or craftsmanship; but that it should be clearly understood that such protection is confined to its artistic form and does not extend to the processes or methods of production, or to an industrial design capable of registration under the law relating to designs and destined to be multiplied by way of manufacture or trade.

#### *Application to Existing Works.*

10. "The Conference is of opinion that existing works in which copyright actually subsists at the commencement of the Act (but no others) should enjoy, subject to existing rights, the same protection as future works, but the benefit of any extension of terms should belong to the author of the work, subject, in the case where he has assigned his existing rights, to a power on the part of the assignee at his option either to purchase the full benefit of the copyright during the extended term or, without acquiring the full copyright, to continue to publish the work on payment of royalties, the payments in either case to be fixed by arbitration if necessary.

#### *Miscellaneous.*

11. "The Conference is of opinion that provision should be made to stop the importation of pirated copies of a copyright work into any part of His Majesty's Dominions to which the Imperial Act extends.

"The Conference is further of opinion that it is not desirable to continue the special provisions of the Foreign Reprints Act, at least so far as regards self-governing Dominions.

12. "The Conference is of opinion that it is undesirable expressly to confer rights on the authors of works which themselves infringe the copyright in other works, and that if necessary a reservation to this effect should be made when the revised Convention is ratified."



25



Dominions

No. 25.

CONFIDENTIAL.

IMPERIAL CONFERENCE, 1911.

ORGANISATION OF THE COLONIAL OFFICE.

CD. 2785.

IN April 1905 Mr. Lyttelton wrote a Circular despatch to the Governors of the self-governing Colonies in which he reviewed the past history of the Colonial Conferences and made suggestions for the future. There were two main suggestions. The first was that, seeing that the Conferences had "step by step assumed a more definite shape and acquired a more continuous status," it might be said "that an Imperial Council for the discussion of matters which concern alike the United Kingdom and the self-governing Colonies has grown into existence by a natural process," and "it might be well to discard the title of 'Colonial Conferences,' which imperfectly expresses the facts, and to speak of these meetings in future as meetings of the 'Imperial Council.'"

Mr. Lyttelton contemplated Conferences meeting at prescribed intervals, composed of the Secretary of State for the Colonies and the Prime Ministers of the self-governing Colonies, assisted by special Ministers or Representatives for special purposes. He contemplated these Conferences taking further shape spontaneously and not in obedience to written rule, but, in order to mark their permanence and their continuity, he proposed to substitute for the term "Colonial Conference" the term "Imperial Council." The future composition of the Conference or Council he recommended as a subject for discussion at the next meeting.

His second suggestion was that, inasmuch as the Conference or Council meets only at intervals, though at regular intervals, there ought to be a standing body. "a permanent Commission representing all the States concerned," which should prepare the work for the Conference, and "to which the Imperial Council



at their meetings could refer questions for subsequent examination and report."

This permanent Commission, which might be constituted in the first instance for a term of years only,—

(a.) Would be a purely consultative and advisory body.

(b.) Would supplement but not supersede the Colonial Office.

(c.) Would consist of members nominated in a certain proportion by the different Governments, each Government paying their own representatives.

(d.) Would have a London office and a secretarial staff paid for by the Imperial Government. The Secretary of the Commission would preferably act also as Secretary to the Imperial Council.

Thus it will be noted that, prior to the Conference of 1907, the Imperial Government took the initiative in suggesting some new organisation, and that the organisation contemplated was outside of, and supplementary to, the Colonial Office.

Mr. Lyttelton's proposals met with general approval from the Cape, Natal, and Australia, the Cape Ministers remarking of the proposed permanent Commission "that such an Intelligence Department, well equipped as it no doubt would be with information and facts requiring examination with a view to harmonising the legislation of the United Kingdom and the Colonies, is an essential adjunct, and will very materially facilitate and expedite the work of the parent body." New Zealand sent no answer; Newfoundland took objection to the Imperial Council under the mistaken impression that it might have executive or legislative powers; while Canada held that any change in the title or status of the Colonial Conference should originate with that body itself; that the title Imperial Council rather suggested encroachment upon the self-government of the Colonies, and that a similar objection might be urged against the proposed permanent Commission.

Further discussion of the subject was reserved for the Conference of 1907, on the Agenda for which Lord Elgin wrote to the self-governing Colonies in January of that year. He had in a previous despatch suggested that the constitution

of the Conference should be one of the subjects for discussion; and he put it in the forefront of the Agenda, noting the Resolutions which had been sent in by the Commonwealth of Australia and by New Zealand.

These were as follows:—

#### BY AUSTRALIA.

##### (a.) *Imperial Council.*

That it is desirable to establish an Imperial Council, to consist of representatives of Great Britain and the self-governing Colonies, chosen *ex officio* from their existing administrations.

That the objects of such Council shall be to discuss at regular Conferences matters of common Imperial interest, and to establish a system by which members of the Council shall be kept informed during the periods between the Conferences in regard to matters which have been or may be subjects for discussion.

That there shall be a permanent secretarial staff charged with the duty of obtaining information for the use of the Council, of attending to the execution of its resolutions, and of conducting correspondence on matters relating to its affairs.

That the expenses of such a staff shall be borne by the countries represented on the Council in proportion to their populations.

##### (b.) *Organisation of Colonial Office.*

That the Secretary of State for the Colonies be invited to frame a scheme which will create opportunities for members of the permanent staff of the Colonial Office to acquire more intimate knowledge of the circumstances and conditions of the Colonies with whose business they have to deal, whether by appointments, temporary interchanges, or periodical visits of officers, or similar means.

#### BY NEW ZEALAND.

##### *Imperial Council.*

That it would be to the advantage of the Empire, and facilitate the dealing with questions that affect the over-sea Dominions, if an Imperial Council were established to which each of the



self-governing Colonies should send a representative.

The first discussion at the 1907 Conference, Cd. 3258, after the arrangement of business, was on the proposed Imperial Council. This discussion was continued on the following day under the heading Future Constitution of the Conference; it was continued for part of a third day, and eventually the following Resolution was passed:—

"That it will be to the advantage of the Empire if a Conference, to be called the Imperial Conference, is held every four years, at which questions of common interest may be discussed and considered as between His Majesty's Government and his Governments of the self-governing Dominions beyond the seas. The Prime Minister of the United Kingdom will be *ex officio* President, and the Prime Ministers of the self-governing Dominions *ex officio* members of the Conference. The Secretary of State for the Colonies will be an *ex officio* member of the Conference, and will take the chair in the absence of the President. He will arrange for such Imperial Conferences after communication with the Prime Ministers of the respective Dominions.

"Such other Ministers as the respective Governments may appoint will also be members of the Conference—it being understood that, except by special permission of the Conference, each discussion will be conducted by not more than two representatives from each Government, and that each Government will have only one vote.

"That it is desirable to establish a system by which the several Governments represented shall be kept informed during the periods between the Conferences in regard to matters which have been or may be subjects for discussion, by means of a permanent secretarial staff, charged, under the direction of the Secretary of State for the Colonies, with the duty of obtaining information for the use of the Conference, of attending to its resolutions, and of conducting correspondence on matters relating to its affairs.

"That upon matters of importance requiring consultation between two or more Governments which cannot conveniently be postponed until the next Conference, or involving subjects of a minor character or such as call for detailed consideration, subsidiary Conferences should be held between representatives of the Governments concerned specially chosen for the purpose."

At a later stage of the Conference there was a supplementary discussion under the heading "Interchange of Permanent Staff."

The representatives of Australia, New Zealand, and the Cape—Mr. Deakin, Sir Joseph Ward, and Dr. Jameson, were most in favour of

change; while the representatives of Canada and the Transvaal—Sir Wilfrid Laurier and General Botha, especially the former, were most opposed to it. Assuming a Conference to be held next year under present conditions, of the first three only Sir Joseph Ward would be present; while Sir Wilfrid Laurier would still represent Canada, and General Botha would speak for South Africa.

The following are the main features of the Resolution and of the discussions connected with it:—

(i.) The term "Imperial Council" was dropped, and the term "Imperial Conference" substituted. This was really a concession of Mr. Deakin to the more conservative Sir Wilfrid Laurier.

(ii.) The Prime Minister of the United Kingdom was made *ex officio* President of the Conference, whereas Mr. Lyttelton had left the representation of His Majesty's Government to the Secretary of State for the Colonies.

(iii.) The term "Dominions" or "self-governing Dominions" was adopted in lieu of "self-governing Colonies."

(iv.) Lord Elgin promised to recast the Colonial Office, so as entirely to separate the self-governing from the Crown Colonies.

(v.) A Permanent Secretariat was agreed upon, but it was to be under definite control, and that control was to be exercised by the Secretary of State for the Colonies, not by the Prime Minister of the United Kingdom.

It was not to be, as Mr. Deakin wished it to be, "a kind of joint and general department under the control of the Prime Minister of Great Britain."

(vi.) The conclusion as to the Secretariat was arrived at as follows—Sir Wilfrid Laurier insisted strongly that the Secretariat must be responsible to some one single Minister. It came to be agreed roughly that the Minister could only be either the Prime Minister or the Secretary of State for the Colonies. The Prime Minister, through Lord Elgin, declined to undertake the duty and therefore responsibility to the Secretary of State for the Colonies was accepted—the more readily because of the promised reorganisation of the Colonial Office.

(vii.) Mr. Deakin, the strongest advocate of a Secretariat outside the Colonial Office—which, it will be remembered, was Mr. Lyttelton's



suggestion—used language in some parts of the discussion which pointed not merely to having a Secretariat outside the Colonial Office, but to removing the work of the self-governing Dominions altogether from that Office.

Thus he argued—

"There appear to us to be a good many practical P. 28.  
reasons why it is desirable that the Colonial Office in the future should be what it was at its commencement, simply the office for the Crown Colonies."

"It appears to me that it would be for the advantage P. 29.  
of the Colonial Office, and it would be to our advantage, if we were dissociated altogether from the Dependencies which are governed, and admirably governed, if I may say so, from this office."

On the other hand he said—

"All the Departments of this Government would P. 34.  
remain—the Colonial Office, the Foreign Office, the Board of Trade; and matters of enquiry and ordinary communications would go to those Departments as a matter of course. What I thought might be attached to the Prime Minister personally were those despatches which have respect to the exercise of the self-governing functions of self-governing communities: all great constitutional questions or matters involving constitutional questions."

(viii.) The desire to have either a Secretariat outside the Colonial Office, or a Dominions Department outside the Colonial Office, was, to judge from the tone of the discussion, clearly due to the desire for the fact or the semblance of more equality and less subordination. Hence the desire (a) to communicate with the Prime Minister and not with the Head of a single Department of State, and (b) to be dissociated as far as possible from the Crown Colonies.

(ix.) On the other hand, Sir Wilfrid Laurier laid down baldly that—

"The Colonial Office, which is already divided into P. 30.  
departments, is the proper Department to deal, under ministerial responsibility, with the self-governing Colonies, or Crown Colonies."

(x.) In the course of the discussions stress was laid on the importance of personal visits to the Dominions.

After the Conference had been held, the Colonial Office was rearranged on the lines of constituting a separate branch of the office for

dealing with the work of the self-governing Colonies, and connecting with it "a permanent Secretary, who, with such assistance as may be found to be necessary, will be specially charged with the duties, retrospective and prospective alike, imposed or contemplated by the periodical Conferences."

The Department in question was styled the Dominions Department. It was to deal with all business of every kind relating to the self-governing Colonies; all questions relating to emigration were to be referred to it, and it was to be kept in close touch with the Commercial Intelligence Committee of the Board of Trade. It was to be entirely separate from the Crown Colonies Department, except that the Crown Colonies and Protectorates of the Pacific, owing to their close relations to Australia and New Zealand, and, for similar reasons, Basutoland and the South African Protectorates, were to be included in the scope of the Dominions Department.

The Secretariat of the Imperial Conference was to be linked to, but not merged in, the Dominions Department. The Secretary was to be a member of the Department, but also to have his own special duties, being authorised on matters of routine to correspond direct with the Colonial Ministries.

It was suggested that an alternative channel of communication might be between the Secretariat and the High Commissioners and Agents-General in this country; and the Colonial Governments were to say how far this alternative would commend itself to them, the Secretary of State being anxious to establish close and harmonious relations between the Secretariat and the Colonial representatives in London.

These arrangements were referred to the Dominions in the autumn of 1907. The Transvaal Ministers (General Botha) answered first, warmly approving what had been done, and strongly favouring the alternative channel of direct communication, *i.e.*, communication between the Secretary of the Conference and the representative of the Transvaal in London.

The Cape Ministers (Dr. Jameson) cordially approved, "but while regarding the present arrangement as an advance towards the ultimate creation of an Imperial Department suitable and adequate to co-ordinating the organisations of a



widely-spread and fast-growing Empire, they can only regard the present as a temporary expedient." They considered that the Secretary of the Conference should confer with the High Commissioners and Agents-General with a view to drawing up proposals for future relations and correspondence, to be submitted to the various Governments.

A bare acknowledgment came from the Orange River Colony.

The only comment from Natal was to favour the "alternative channel of communication" between the Agent-General and the Secretary to the Conference.

Australia, through Mr. Deakin, sent a Minute treating what had been done as wholly inadequate, and practically reiterating their original demand as regards the Secretariat for an organisation entirely separated from the Colonial Office, controlled by, or on behalf of, the Conference, and paid for by the countries represented.

Canada and New Zealand sent no answer.

The position at the present date is as follows, so far as it bears on the future of the question:—

1. The Dominions Department has been worked in separation, as far as possible, according to the scheme.

2. The Secretariat has been worked mainly through that Department, to a greater extent than had been originally contemplated.

3. South Africa has been united, and now, with the exception that Newfoundland is still outside Canada, the Dominions are nearing their final form.

4. The union or federation of New Zealand with Australia may never come, and is in any case probably distant. The Pacific and South African Crown Colonies and Protectorates must continue for the present to be directly under the Imperial Government, but to be worked with the Dominions.

5. A High Commissioner has been appointed for Australia and for South Africa.

6. A Labour Prime Minister will speak for Australia, instead of Mr. Deakin, and General Botha will speak for South Africa.

*July 4, 1910.*



Dominions

No. 26.

Confidential.

THE SELF-GOVERNING DOMINIONS AND  
COLOURED IMMIGRATION.

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JULY, 1908—JULY, 1910.

(In continuation of Dominions No. I.)

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## THE SELF-GOVERNING DOMINIONS AND COLOURED IMMIGRATION.

JULY, 1908—JULY, 1910.

### CANADA.

Japanese  
Immigration.

Since July, 1908, Japanese immigration into Canada has proceeded without friction or difficulty in accordance with the arrangements made between the Japanese and the Canadian Governments. At first some slight difficulty was caused by the fact that in April, 1908, a larger number of Japanese left for Canada than had been expected; doubt was thrown on the *bona fides* of the category "emigrants' relatives," because of the preponderance of males among them, and in four months no fewer than 203 male domestic servants had left for Canada, which was quite an excessive number. The matter was brought by the Ambassador at Tokio to the notice of the Japanese Government, with the result that Count Hayashi took the matter out of the hands of the local authorities and inaugurated a special bureau at the Ministry of Foreign Affairs which alone would have the right to issue permits. As a result of this action on the part of the Japanese Government, the slight friction which had taken place rapidly disappeared and has not recurred.

Dominions  
No. 3,  
p. 171.

Chinese  
Immigration,  
*Ibid.*, p. 169.

On the 22nd July, 1908, the Secretary of State for Foreign Affairs forwarded a copy of a note from the Chinese Minister, drawing attention to the prejudicial effect likely to be exercised on the admission of Chinese students into Canada by the passing of the proposed Immigration Bill of the Canadian Government. It was pointed out by the Minister that under the Canadian Chinese Immigration Act of 1903, Section 6, students who could substantiate their status to the satisfaction of the Controller and who were bearers of certificates of identity specifying their occupation and their object in visiting Canada issued by their Government were exempt from the payment of the tax of \$500. The new Immigration Law proposed that such students should pay a tax of \$300 which would be refunded after a year's study had been completed. This would be a hardship on students who were a poor class and could not afford the payment.

p. 180.

The Deputy Governor-General in a despatch of the 4th September, 1908, replied that the amount to be paid by students in future would be \$500—net \$300. The difficulty in administering the law had hitherto been very

great; many Chinese boys of the labouring classes entered Canada as students without paying the tax, but every consideration would be given to each case as it arose, although the law could not be altered.

The views expressed by the Chinese Government were confirmed by despatch from His Majesty's Minister at Peking of the 8th September, 1908. The views of Sir John Jordan were communicated to Canada in a despatch of 22nd October, 1908. Eventually the Canadian Government decided to send Mr. Mackenzie King, who had come to England *en route* to attend the Opium Conference at Hong Kong, to Peking to negotiate with regard to the question of Chinese immigration into Canada. The Canadian Government informed the Imperial Government that the capitation tax of \$500 had not been successful in putting a complete stop to immigration from China, 1,500 Chinese having entered during the last year. They proposed, therefore, to obtain the total exclusion of the Chinese labouring class in return for permitting merchants, students, &c., free entry into Canada, or, if this were not possible, to arrange an agreement similar to that settled with Japan, under which only a limited number of emigrants would be allowed to proceed to Canada from China in any one year.

Mr. Mackenzie King was commended to the good offices of the Minister at Peking, and he carried on a negotiation with the Chinese Government. No definite decision was come to, though friendly sentiments were expressed on both sides, and the Chinese Government became fully aware of the position as it presented itself to Canada.

pp. 18-25 of  
Dominions  
No. 10.

The position with regard to Indian immigration to Canada has not changed materially since 1908. A very full and interesting report was received on the subject of the position of Sikhs in British Columbia from the Governor of British Honduras in a despatch from Lord Grey dated the 7th January, 1909. The Governor had, at the request of His Majesty's Government, visited Canada and made enquiries as to the possibility of transporting to British Honduras some, at least, of the Indians in Vancouver, but he discovered that it was impossible to do so owing to the opposition of interested parties. He reported that there was no justification for the view that they were in distress or that the climatic conditions were unfavourable. Their wages (\$45 a month) enabled them to save \$35 a month, so that they could return home and pay off their mortgages on their lands there. The millowners preferred to employ Sikhs, while, on the other hand, the white trades unions were strongly opposed to them, and it was important that steps should be taken to prevent the Indian immigration becoming serious or the Dominion Government would be forced to take action.

Indian  
Immigration.

p. 2 of  
Dominions  
No. 10.

The report of Colonel Swayne was communicated to the India Office, and the earnest attention of Lord Morley was invited as to whether there was any possibility of adopting measures in India to control effectively immigration from India to Canada. Mr. Mackenzie King, while on his mission with regard to the opium question, visited India as well as China and discussed with the Indian Government the probability of the present arrangements for stopping the influx of Indians into Canada continuing to be effective and the attitude of the Indian Government towards these arrangements. The Government of India, according to a despatch of the 16th March, 1909, considered that, as there was no direct line of steamships from

p. 17 of  
Dominions  
No. 10.



India to Western Canada, further immigration into Canada of Indians was very improbable, especially as all the Asiatic immigrants, except those possessing treaty rights, were required to have in their possession at least \$200. They had discussed with Mr. Mackenzie King the question whether the Indian Government could take any measures to prohibit emigration, but they were satisfied that this was not possible, and they did not intend to raise any question with regard to the steps which had been taken to control immigration into Canada. They added a strong expression of appreciation of the conciliatory attitude of the Canadian Government.

Dominions  
No. 10,  
p. 13.

That attitude was also exhibited in the disallowance on 15th February, 1909, by the Government of Canada of the British Columbia Act of 1908, which had purported to regulate immigration into British Columbia. The Act had been pronounced invalid by the Courts on the ground, as regards Asiatics generally, that it was contrary to the immigration legislation of the Dominion, and with regard to Japan in particular that it was contrary to the Act of the Dominion Parliament (6 and 7 Edward VII., Chapter 50) ratifying the Convention between Great Britain and Japan regarding the relations of Canada and Japan. The formal disallowance therefore, while not absolutely essential, was regarded as a mark of courtesy to both the Japanese and Indian Governments.

Proposed  
negotia-  
tions in  
conjunction  
with the United  
States  
(426).

On the 3rd January, 1910, the Foreign Office forwarded a copy of a note from the United States Ambassador in London. Mr. Whitelaw Reid had been instructed to enquire the probable attitude of His Majesty's Government with reference to Japanese immigration into Canada, Australia, and other colonies in connection with the proposed new treaty with Japan. The United States treaty with Japan would expire a year later than the British treaty, but it might be desirable to take combined action in negotiating with Japan. The United States Government would desire the insertion of a clause in the new treaty similar to the 4th paragraph, Article 2,\* of the existing treaty.

After careful consideration the Foreign Office were informed on the 24th January that it was desirable that His Majesty's Government should preserve an entirely free hand and should not appear either to the Japanese Government or to the Governments of the Dominions concerned to be negotiating in common with the American Government. If the Japanese Government were likely to conclude a treaty permitting commercial intercourse only and silent on the subject of immigration it would be advantageous, but otherwise it was presumed that a treaty on the same lines as the existing one would be arranged with a Colonial clause leaving the Dominions to adhere or not as they thought fit. The United States Ambassador was informed to this effect by Sir Edward Grey on the 31st of January. Mr. Whitelaw Reid then asked whether he could be supplied with a copy of the confidential arrangements between the Canadian and Japanese Governments concluded in 1907. This request was referred to the Government of Canada, which declined to comply with it on the ground that the matter was essentially confidential

(4069).

\* It is, however, understood that the stipulations contained in this and the preceding Article do not in any way affect the laws, ordinances, and regulations with regard to trade, the immigration of labourers, police, and public security, which are in force or may hereafter be enacted in either of the two countries."

and had always been regarded as confidential. The refusal was accordingly communicated to the Government of the United States on the 2nd June, 1910.

The Immigration Bill of the Canadian Parliament, which did not become law in 1909, passed into law in 1910. One clause of the Act expressly permits the Government of Canada to forbid by Order in Council the landing of persons of any specified race who are considered physically unfit for emigration to Canada, and when this clause was sent in the draft Bill to the India Office the Secretary of State for India expressed the hope that it was not designed to depart from the attitude with regard to Indian immigration which had already been adopted, and in reply the Canadian Government stated that there was no intention of altering the attitude already adopted, and the intention was merely to remove any doubt as to the legal powers of the Government.

The Immig-  
ration Act  
of 1910  
(7,178).

On the 2nd June, 1910, the India Office forwarded to the Colonial Office copy of a communication from certain British Indian subjects resident in Canada. The communication alleged that the Dominion Immigration Laws discriminated against the people of India who were British subjects by requiring them to produce a sum of \$200 before landing; moreover, they humiliated the people of India, since aliens, such as the Japanese, could enter under their treaty rights subject to the ordinary regulations. Further, the rule by which tickets must be taken direct from India to Canada was an unfair one, and caused serious trouble as there was no direct line of transportation from India to British Columbia. Indian students and merchants were exposed to the same disadvantages as were labourers, and were thus worse off than in the United States. Moreover, political rights in Canada were denied to Indians. In a letter of the 11th of June the India Office were informed that the reference to the denial of political rights was no doubt reference to the fact that the franchise of the Dominion was determined by provincial law, and the law of the province of British Columbia refused the franchise to British Asiatics. It was added at the same time that Lord Crewe was forwarding the petition to the Governor-General of Canada with a request for a report.

16,667.

#### COMMONWEALTH OF AUSTRALIA.

##### Queensland.

In 1908 the Queensland Pearl Shell and Bêche de Mer Commission reported advocating the substitution of white for Japanese labour on the Torres Straits Pearl Fishery.

Pearl Shell  
Fishery,  
39,332/08.

The report, page 62, runs: "The patient industry, the uncomplaining endurance of hardships, and the generally law-abiding character of these Asiatic sojourners in our midst are admitted. In many respects they are not undesirable residents, but in no country in the world outside the British dominions is any primary industry allowed to be monopolised by a race of aliens."

"White men practically refuse to associate on equal terms with men of colour. Since the departure of the Pacific Islanders the sugar industry has ceased to be regarded as one to be shunned by white men, and if the men who now monopolise the pearl shell fishery, who are greatly superior to the Pacific Islanders in civilisation, were to disappear, the prejudice against that industry would soon pass away in like manner."



Although action on this report has been under the consideration of the Queensland Government, nothing has yet been done to carry into force the recommendations of the Commission, and it does not appear probable that any action will be taken in the near future as the fishing industry is at present almost totally dependent on the Japanese.

Old Age  
Pensions.

The Parliament of Queensland in an Act No. 6 of 1908, making provision for the payment of Old Age Pensions, excluded Asiatics from the benefit of the Act. At the same time an Act of the Commonwealth of Australia, No. 17 of 1908, made provision for the grant of Old Age Pensions by the Commonwealth Government. This Act also discriminated against Asiatics, but it was modified in passing through the Parliament so as to permit of the grant of pensions to Asiatics born in Australia, the ground being that the Parliament considered that no discrimination should take place between Asiatics born in Australia and other Australians. In informing the India Office of the passing of these Acts, in a letter of the 3rd July, 1908, the Secretary of State informed Lord Morley that as similar discrimination existed in the Old Age Pension Acts of New South Wales, Victoria, and New Zealand, it was not intended to take any action with regard to the Acts.

#### New South Wales.

Factory  
legislation.

In 1909 a Bill was introduced into the Parliament of New South Wales to amend the Factories and Shops Act of 1896. The amendment included a provision which made it clear that the employment of one or more Asiatics in any laundry, office, building, or place was sufficient to constitute a factory, although the employment of four persons was necessary in the case of Europeans.

In the second place regulation was made of the hours of employment in any factory where any Asiatic worked, and in any other factory where any person was employed in preparing or manufacturing articles of furniture.

p. 38 of  
Dominions  
No. 10.

On receiving this Bill Lord Crewe telegraphed to the Governor on the 8th October, 1909, urging for high political reasons affecting the Empire the undesirability of discrimination against all Asiatics *nominatim*.

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Dominions  
No. 10.

The Governor replied by telegram on the 13th December, in which he explained that the delay in replying to the inquiries was due to the illness of his Premier. He explained that all reference to Asiatics had been cut out, the word "Chinese" being inserted in the place of "Asiatics." It was pointed out that the amendments were necessary to avoid the evasion of the laws of the State as to hours of work and wages by the Chinese who, especially in the furniture trade, persistently evaded the law by working during prohibited hours and professing to be in partnership so as to evade the relationship of employer and employee. In view of these explanations and of the restrictions of disabilities to Chinese, the Governor was authorised to assent to the Bill.

It may be added that the alterations were procured in Parliament by the Government laying stress on the fact that the Bill would require to be reserved and might never come into force if the allusions as to Asiatics were maintained.

#### Western Australia.

In 1909 a Bill was introduced into the Parliament of Western Australia for regulating the fisheries, which, among other things, forbade the grant of licences to Asiatics.

The Governor was asked by telegraph as to the position of the Bill, and he reported ultimately that the Bill had been dropped. The question of the exclusion of Asiatics was discussed in Parliament, the Government pressing for total exclusion and the Opposition hesitating to accept it.

#### South Australia.

The Government Resident for the Northern Territory of South Australia stated in his report for 1907 that in 1881 the population included 670 Europeans and 2,734 Chinese; in 1907, 1,110 Europeans, 1,833 Chinese, and 117 Japanese, showing a marked decrease in the number of aliens resident in the territory.

Popula-  
tion.  
34,836/08.

#### Commonwealth.

In a letter from the India Office of the 8th July, 1908, there was forwarded a despatch from the Government of India, dated 12th March, 1908, which enclosed correspondence regarding the attachment of selected officers of the citizen forces of Australia for duty with the Indian Army. It was stated that Lord Morley was advised that the officers in question would find in India valuable opportunities for acquiring experience and military knowledge. Anything which drew together and improved the forces of the Crown in various parts of the Empire must be welcome, and it would seem to be objectionable to refuse a concession to a neighbouring Dominion of the Crown.

Discussion  
with the  
India  
Office.  
p. 264 of  
Dominions  
No. 3.

At the same time in the matter of the Immigration Restriction Amendment Act and in other respects, Indian interests and feelings had been wounded by the course of action recently adopted in Australia, and representations by the Government of India had failed to secure from the Commonwealth Government any modification of the measures which they were compelled to regard as unfriendly.\* Lord Morley therefore was not disposed to encourage the proposal for the exchange of officers, and believed that it was in the interests of both countries to take no further steps until a more just appreciation of the rights and sentiments of the Indian people was felt in Australia.

In a later letter of the 22nd August it was stated that the matter was of some urgency, as arrangements had been made between the Viceroy and the Governor-General of the Commonwealth for an early exchange of officers.

In the reply of the 24th August it was stated that the Secretary of State for the Colonies was reluctant to make the request in question the basis of a general remonstrance. The matter at issue was so small and so reasonable that it would be impolitic to make it a battleground of contention, and in the second place the Government of India had already intimated to the Commonwealth Government that they agreed to the proposal.

The India Office accordingly telegraphed to the Government of India sanctioning the proposal.

\* Apparently this was written in ignorance of the concessions actually made in respect of emigration to Australia. (See below, p. 9.)



Dominions  
No. 3,  
p. 269.

In a letter from the Colonial Office of the 15th September the question was dealt with at length, and a draft despatch was enclosed which Lord Crewe was prepared to send to the Commonwealth Government if Lord Morley concurred. The despatch, after stating that the relations of the Self-governing Dominions to the coloured races was a question of the greatest concern to the Commonwealth and the States of Australia and of much anxiety to His Majesty's Government, proceeded to indicate the light in which the difficult question of colour and race restriction appeared to the Secretary of State. It was for the people of Australia to decide, and they had decided, that Australia should be inhabited by the white races. But the natives of India were also subjects of the King, and though there were differences of race and colour, of tradition and prejudice, yet India was none the less a great entity in the system of the British Empire. Its merchants and aristocracy, its educated classes, were entitled to, and were aware that they were entitled to, the ordinary privileges which attached to men of substance and culture and breeding in West and East alike, while Indian soldiers have fully earned under the British flag whatever rights and privileges British citizenship could confer.

In the United Kingdom it had not been found necessary to restrict in any way Indian immigration, because the possibilities of coloured immigration there were very slight. In Australia it had been found necessary to impose restrictions, and it seemed to be an inevitable corollary to suggest certain corresponding restrictions in India, real or nominal, on some classes of Australians which would not apply to residents of the United Kingdom when visiting India.

In the letter to the India Office the suggestion of reciprocity of exclusion was explained by a reference to the proposals which had been drawn up in 1888, when there was a strong burst of anti-Chinese feeling in Australia, and a conference of representatives of all the Australian Colonies favoured a proposal for an arrangement between the British and Chinese Governments to put both countries on an equal footing in respect of the privileges and disabilities of their subjects. It was not intended to lay this document at once before the Commonwealth Government, but it might be a feasible proposal on which an arrangement might be arrived at.

This letter was forwarded by the Secretary of State for India to the Government of India, and the reply of the Indian Government was communicated to the Colonial Office in a letter of the 6th August, 1909.

The Government of India reported that the position of Indians in Australia had not hitherto attracted as much attention as their position in certain other parts of His Majesty's Dominions. The emigration of Indians to that country had never been excessive, and since 1901 it had been strictly controlled under the Immigration Restriction Act of the Commonwealth. The resident Indian population was inconsiderable, and there had never been any emigration of indentured labour from India. The restrictions to which Indian residents in Australia were subjected were aimed rather against Chinese and Japanese, and were not consciously directed against natives of India. As regards immigration the dictation test provided for under the Commonwealth Acts was waived in the case of Indian merchants, students, and tourist travellers holding passports from a local Indian Government and desirous of touring

View of  
the Indian  
Govern-  
ment.  
P. 32 of  
Dominions  
No. 10.

in Australia. The concession had been secured by Lord Northcote on his own motion from the Commonwealth Government and without solicitation from the Indian Government. The Government of India were unwilling to depart from their fixed policy of taking no steps to control voluntary emigration from India. They declined to do so in 1905 when the Australian Government had suggested the introduction of a system of supervision at Indian ports so as to prevent the departure from India of persons who would be excluded from landing in Australia. They had similarly declined a proposal in 1907 of the Canadian Government to control in India the emigration of Sikhs to Vancouver. They would not be able to accept the proposal to control emigration from India without taking the necessary power by legislation, and to take such power would be very unpopular. No real advantage would be gained by Indian subjects; the restrictions on their entry into Australia would in effect be maintained, and the Indian Government would undertake the invidious task of enforcing the necessary check at the port of departure. The exclusion from India of Australian emigrants would merely be nominal, and the one-sidedness of the arrangement would be patent and their acceptance of it would be regarded, and justly, as a betrayal of the cause of the Indian people.

The Government of India therefore considered that as there was no serious feeling in India with regard to the policy of the Commonwealth Government, and as the Commonwealth had made substantial concessions with regard to the admission of merchants, students, and travellers, it would be better to take no action at the present time.

In a letter of the 21st August, 1909, the Colonial Office concurred for the present in letting the matter drop.

Dominion  
No. 10,  
p. 35.

#### NEW ZEALAND.

In 1908 a Bill was introduced to amend the law relating to shearers' accommodation, by which the provision in the original Act of 1898 with regard to separate sleeping accommodation for Chinese was extended to all Asiatics. The Bill, however, was not passed that session and has not, so far, been reintroduced. 31,923/08.

In 1908 the Parliament of New Zealand passed an Act, No. 230, to amend the Immigration Restriction Act of 1908, which in itself was a consolidating Act embodying the provisions of Sections 3, 4, and 5 of the Act of 1907, referred to at pages 36 and 37 of Dominions No. 1. In the amending Act provision was made that Section 42 of the principal Act should not apply to the return to New Zealand of any Chinese who registered his name and thumb print with a Collector of Customs and returned to New Zealand within four years after the date of registration, or to the return to New Zealand before the 1st of January, 1909, of any Chinese who had at any previous time been resident in the Dominion. Chinese Immigration, 31,923/08.

The Foreign Office in a letter of the 12th January, 1909, while concurring with the Secretary of State in his proposal not to disallow the Act, suggested that the use of finger prints should be dispensed with in the case of Chinese who, by reason of their education, property or public character, were well known or could easily be identified otherwise. p. 31 of Dominions No. 10.



In the reply from this Office of the 27th January, 1909 it was pointed out that all that was required under the New Zealand legislation was the giving of a thumb print, and that in pension and civil matters in India the practice was already in force under the laws of India. Lord Crewe therefore did not consider it necessary to take any exception to the law as it stood.

Dominions  
No. 10,  
p. 36.

On the 23rd August, 1907, the Foreign Office forwarded a note from the Chinese Minister asking for certain changes in the New Zealand laws as to Chinese immigration. The Minister, Lord Li, protested against the legislation as oppressive and indiscriminating, and asked that facilities should be afforded to Chinese subjects to visit the Dominion for trade and for intellectual studies. He therefore submitted the following proposals for modification in the New Zealand regulations:—

"1. Chinese officials, students, and merchants with capital, shall be granted the same privileges and facilities in landing at any port of New Zealand as are granted to the subjects of other Powers who have Treaty relations with England: Provided they can produce passports issued by competent Chinese authorities certifying as to status and condition, such passports to be viséed by English Consuls or otherwise duly authorised English officials.

2. Any Chinese subject who has been resident in New Zealand for over three years and who is well known to have been engaged *bonâ fide* in any respectable business can have his wife and family brought from China to New Zealand to reside with him, and his wife and family may be allowed to land without paying any tax or submitting themselves to the language test, if they can produce a passport or passports issued by a competent Chinese authority certifying that they are in fact the wife and family of the aforesaid Chinese subject.

3. No Chinese subject who has been resident in any part of New Zealand for a number of years and is well known to his neighbours shall, if he desires to leave New Zealand temporarily with the intention of returning within four years, be required to leave his thumb impressions for identification.

4. Any Chinese subject who is able to pass the language test on entering New Zealand shall be allowed to land, like the subjects of other Powers, without paying any tax.

5. Any Chinese subject who is passing through New Zealand on his way to other countries shall be exempted from paying any tax if he can find sureties to guarantee that he is a *bonâ fide* through traveller. If such traveller is afterwards found to remain in any part of New Zealand, he will be dealt with in accordance with Clause 34 of the Immigration Restriction Act of 1908."

10,606/10.

The representations of Lord Li were forwarded to the Governor of New Zealand, who replied on the 27th February, 1910, forwarding a memorandum from his Prime Minister in which he stated that proposals Nos. 1 and 5 of the Chinese Government were accepted, and the law would be amended accordingly at the earliest opportunity—the period during which the emigrants would be permitted to remain in New Zealand being fixed

by the Minister of Customs in each case. It was added that it was regretted that the other proposals, Nos. 2 to 4, could not be accepted.

#### SOUTH AFRICA.

During the two years ending on 31st May, 1910, the date of the establishment of Union, the last of the indentured Chinese labourers employed in the Transvaal left South Africa, the final shipload leaving in March, 1910, and the South Africa Union Act was passed under which the authorities dealing with Indian questions will be entirely altered.\* No decision was arrived at with regard to the termination of Coolie immigration to Natal, which has been reserved for consideration with the Union Government, and the passive resistance movement and complaints of the Indians with regard to their treatment in the Transvaal continued uninterruptedly. The following is a more detailed account under separate Colonies:—

#### Transvaal.

The general principle followed by His Majesty's Government has been, as Lord Crewe stated in a despatch replying to Indian petitions in December, 1908, to acquiesce in the curtailment of any further immigration of Indians while doing everything possible to secure fair treatment of those in possession of domiciliary rights. The passive resistance movement of the Indians against the Registration and Immigration Legislation continuing unabated, Lord Crewe in December, 1908, approached the Transvaal Government with further proposals for a settlement. These were put to General Botha by Lord Selborne, as follows:

"The Indian Government, says the Secretary of State, recognise that they are not in a position to make representations against the Transvaal's refusal to repeal Act No. 2 of 1907, but they ask for the considerate treatment of Indians who possess pre-war rights but were not continuously in the Transvaal for three years before the war, and further urge the admission of a limited number of educated Indians.

The Secretary of State proceeds to make the following suggestions, proposed apparently by a deputation consisting of both Houses of the Imperial

\*Note.—Section 147 of the South Africa Act, 1909:—

"147.—The control and administration of native affairs and of matters specially or differentially affecting Asiatics throughout the Union shall vest in the Governor-General in Council, who shall exercise all special powers in regard to native administration hitherto vested in the Governors of the Colonies or exercised by them as supreme chiefs, and any lands vested in the Governor or Governor and Executive Council of any colony for the purpose of reserves for native locations shall vest in the Governor-General in Council, who shall exercise all special powers in relation to such reserves as may hitherto have been exercisable by any such Governor or Governor and Executive Council, and no lands set aside for the occupation of natives which cannot at the establishment of the Union be alienated except by an Act of the Colonial Legislature shall be alienated or in any way diverted from the purposes for which they are set apart except under the authority of an Act of Parliament."

Section 85, however, places various matters of a local nature under the Provincial Councils. Under Section 135, laws in force at the establishment of Union continue in force in the respective Provinces until repealed or amended.



Parliament and representing all sections of opinion, as a means to securing a final settlement :—

That the Transvaal Government, in addition to conceding the two points mentioned above (the considerate treatment of Indians with pre-war rights and the admission of a limited number of educated Indians), which the Secretary of State presumes might be conceded by Executive action, might undertake to repeal Act No. 2 of 1907, and consequently Act No. 36 of 1908 also, after the lapse of such a period as would ensure that all the Indians were registered under them, and might rely afterwards on a strict immigration law re-enacting only so much of the repealed legislation as might be required to preserve the rights of Indians already registered. The Secretary of State says that he infers from Mr. Smuts's speech, printed on pages 6 and 36 of the Blue Book [Cd. 4327], that he was at one time inclined to favour some such solution. The Secretary of State adds that His Majesty's Government feels that it is not in a position to press this solution upon the Transvaal Government, who have given effect to the terms of the compromise made with Mr. Gandhi and others in January last; but he says that if you and your colleagues were prepared to proceed on these lines on condition of the settlement to be thus arrived at being final, it would be recognised that you desired to meet the difficulty which has resulted from the misunderstanding alleged by Mr. Gandhi to have arisen during the negotiations between him and Mr. Smuts, and not only His Majesty's Government, but the Government of India also, would be greatly strengthened in their efforts to persuade those who sympathise with the Indians to induce them loyally to accept the situation."

General Botha, however, while repeating that his Government would take into favourable consideration applications from educated Indians for admission, declared that what the Indians wanted was to see all differential treatment done away, but that "the admission of Indians into the country on the same educational qualifications as whites could not for a moment be entertained as a policy." He referred to the spirit of fanaticism in the Indian community, and said that the Transvaal Government did not think that the repeal of the Asiatic Act would be a proper solution of the difficulty. In February, Ministers declared that the unfortunate situation created by the action of the Asiatic leaders was passing away, and the small minority were commencing to make application to register. In this, however, it was shown that they were unduly sanguine, and bitter complaints were made very shortly afterwards of the deportation of Indians from South Africa. With regard to deportation the Transvaal Government has always maintained that no Indians have ever been deported from South Africa who could produce satisfactory proof that they were domiciled in some part of South Africa outside the Transvaal. No case has, so far, been clearly established to show that this is untrue, but the facts are still in dispute, and His Majesty's Government have been placed in a somewhat difficult position in regard to these deportations in consequence of the Transvaal in the summer of 1909 making arrangements with the Portuguese authorities for the expulsion of Indians without giving any intimation to

287/08-9.

8942/09.

See  
9539/09  
and  
13,254/10  
and C.O. to  
B. I. Com-  
mittee,  
29th April,  
1909, on  
12,966/09.

His Majesty's Government, a proceeding which has only recently come to their knowledge, and has formed the subject of a despatch of remonstrance by Lord Crewe. Despatch of 6th May, 1910, 12,570/10.

In the summer of 1909, when the Union Bill was under consideration here,\* both Mr. Smuts and Mr. Gandhi were in this country and had interviews with Lord Crewe. As a result Mr. Smuts in a letter of 26th August made certain proposals on which Lord Crewe telegraphed to the Governor as follows :— 28,796/09.

"10th October. No. 1. Question of Asiatics in the Transvaal has been discussed by me with Smuts, and as a result he has agreed to repeal of Act 2 of 1907 and to admission of six educated Asiatics each year on certificates of permanent right of residence. He is unable to accept claim that Asiatics should be placed in position of equality with Europeans in respect of right of entry and otherwise. I have explained accordingly to Gandhi and his colleague, who state that concessions would mark a real step in advance, that so far as their practical effect is concerned they would be ready to accept them; but that it is not possible for them to abandon claim to be equal before the law, even though equality may be only theoretical, and if that claim is not conceded agitation must be continued. Notwithstanding their attitude it will be, in my view, very advantageous if concessions agreed to by Smuts can be provided for by amendment of law as soon as possible, as they are calculated to conciliate majority of Indians in Transvaal as well as moderate opinion in this country and in India, and are distinct step in advance. It appears to me that it would be desirable from the point of view of the Transvaal Government, and also for the advantage of future Union Governments, if matter could be settled before establishment of Union, and your Ministers will, I hope, seriously consider whether it cannot be dealt with at meeting of Legislature which will shortly be held."

Mr. Gandhi was at the same time told that his own proposals "involving a theoretical claim for which his Lordship is not able to hold out any hope of obtaining recognition" could not form the basis of a solution. In this connexion it will be useful, especially as it is not always easy to follow the precise claims of the Indians, to quote the statement made by Mr. Gandhi in January last :— 34,519/09.

"British Indians will be satisfied if Act 2 of 1907 is repealed, and the Immigration Act is so amended as to enable any Asiatic immigrants of culture to enter the Colony on precisely the same terms as Europeans, and without the necessity for complying with any Registration Act. This amendment will allow the Immigration Officer the fullest discretion as to the mode of setting the education test, and will give the power to the Governor in Council to frame regulations limiting the number of immigrants belonging to different classes or races, even though they may have passed the education test. So far as Asiatics are concerned, no amendment of the Immigration Act would be necessary were it not for the presence of the second Asiatic Act passed in 1908. 4,296/10.

\* For modification of the Bill, see under Natal.



The amendment giving the Governor in Council the power to make the regulations in the manner above referred to meets the objection that the administration of the law would be so different from its wording. So long as a limited number of (say up to six) British Indians of culture are admitted into the Colony per year under the education test, British Indians will be satisfied. The granting of these two concessions will finally close the struggle and remove the question from the arena of Indian politics. The educated Indians who have entered the Transvaal will then retire and claim to enter, if at all, under the general test.—M. K. GANDHI."

Ministers, though they endorsed Mr. Smuts's proposals, when it came to the point declared (11th February) that it would be inopportune to introduce Asiatic legislation in the next Session, and they subsequently deprecated publication of correspondence. The general situation, therefore, remained unchanged up to the establishment of Union.

8135/10. Meanwhile, however, an incessant correspondence proceeded with regard to particular grievances, especially the alleged ill-treatment of passive resisters in gaol, in which a hopeless conflict as to questions of fact was in many respects revealed, one side representing for instance Mr. Rustonjee as half starved, and the other representing him as profiting by his imprisonment to get rid of his excessive obesity. One Indian, Nagappan, unquestionably died very shortly after being in gaol, but the official inquiry found that the allegations of the sickness in camp had been wholly refuted and that he left comparatively healthy. 31,803/09. The Indians disputed these conclusions, and pointed out that even the Commissioner found that the supply of blankets was insufficient. In one case the Indians have unquestionably established serious maladministration, 11,518/10. Mr. Royeppen (a barrister educated in this country) and three other Indian prisoners being sent off to 16,096/10. Diepkloof bareheaded and barefoot and without breakfast.

869/9-10. Complaints of the diet scale, especially of the lack of 13,418/10. ghee, were continuous, and alterations in the scale were made by the Transvaal Government, but it would appear from the opinion of the Indian Government expert that it is still susceptible of improvement. The complaints were not confined merely to underfeeding or improper feeding, but were directed to the imposition of tasks repugnant to the religious feelings of the prisoners, and to their being prevented from keeping their religious observances. In the case of Shelat, who was compelled to carry slop pails, the India Office observed and Lord Crewe repeated to the Transvaal Government, that it was not desirable to impose on a high caste Hindu tasks repugnant to his religious scruples, while Lord Crewe communicated to the Colonial Government the facts about the observance of Ramazan in India, and expressed the hope that the question of granting facilities to Mohammedan prisoners to observe the fast might be reconsidered. But Ministers replied to both representations that the prison population was too cosmopolitan to make it possible to differentiate, nor did such differentiation exist in any other South African Colony. 6667/10. 16,094/10.

34,379/09. In considering this controversy it must throughout be borne in mind that in the view of the Transvaal Government there are no political prisoners in the Transvaal, and that the Indians are treated humanely.

### Orange River Colony.

Nothing of importance occurred to affect the position of Indians in the Orange River Colony during this period.

### Cape.

A Select Committee on the Immigration Department which reported in October, 1909 (C. 1, '09) concluded that the charge which had been brought against the Department to the effect that many Asiatics were being illegally admitted into the Colony was not true. It would appear, however, that corrupt practices by others than officers of the Department had in fact been employed to introduce Indians.

### Natal.

In 1908 the Natal Parliament passed two Bills, one to bring to an end the issue of new trading licences to Asiatics, and the other to prohibit after a certain time the holding of trading licences by Asiatics. The justification given for this drastic legislation was the continued displacement of the European trader throughout the Colony by the Asiatic storekeeper, and the consequent 47,294/08. decrease of the European population.

Lord Crewe at once objected to this legislation, and in a despatch of 22nd February, 1909, definitely declined to tender any advice to his Majesty with regard to the Bills, which, being reserved, did not come into force. In commenting on these Bills Lord Crewe observed:—

"It would be a matter of the greatest difficulty 22nd July, 1908, to enumerate any conditions under which it would be 23,912/08. possible to justify the interdiction of a particular class in the State from engaging in normal, legitimate, and necessary occupations; and it would be still harder to justify dispossessing them from their existing means of livelihood, however liberal might be the terms of compensation. But the imposition of such disabilities on a class which owes its presence in the Colony to the Colony's own necessities, and whose numbers have been augmented by the voluntary action and, indeed, the settled policy of successive Colonial Governments over a period of 15 years since the advent of self-government, would appear on its merits to constitute a hardship of a specially grievous character."

In November, 1908, a local Commission was appointed in Natal to consider the advisability of discontinuing or restricting the immigration of Indians under indenture. The Commission reported in the autumn of 1909 that they could not in the interests of the Colony recommend that the importation of indentured Indian labour should be discontinued, but they recommended various minor alterations.

In the summer of 1909, when the Union Bill was under consideration, a deputation of Natal Indians, the leader of which was Mr. Anglia, visited this country and detailed their grievances. These were numerous and of varying degrees of importance, the principal complaints relating to 27,040/09. the Dealers' Licences Law of 1897, the Indentured Immigration Law of 1895, and the policy with regard to the education of Indian children—but of these the deputation in interviewing Colonel Seely declared that the Dealers' 39,208/09.



27,317/09. Licences was by far the most important. A petition was also received from the Indians in the Colony bringing forward numerous grievances and praying for special protection in the Union Act.

After much negotiation the following results were achieved :—

(1) After discussion with the South African delegates sent to this country in connexion with the draft Act, it was decided not to modify Clause 85 of the Union Bill, as it had at first been proposed here to do, but to add the words "and of matters specially or differentially affecting Asiatics" after the words "the control and administration of native affairs" in Clause 147, which vests certain powers in the Governor-General in Council. (See p. 11 for text.)

(2) The Natal Government introduced and carried in November the following amendment of the Dealers' Licences Act :—

"It shall be competent for the applicant for the renewal of a licence, or for person who has duly lodged an objection to such renewal, to appeal to the Supreme Court or to a Circuit Court against any decision given under section 6, Act No. 18 of 1897, by a town council, town board, or licensing board, and the court may order that the renewal applied for be granted or that it be not granted, or may in any case remit the application for re-hearing.

"The Court may also in its discretion award the costs of the appeal against either of the parties thereto."

(3) Lord Crewe telegraphed on December 14th :—

"Amendment to Dealers' Licences Act is viewed by His Majesty's Government with much satisfaction. Please inform your Ministers that assurance has been given by Secretary of State for India in Council that emigration of indentured Indians to Natal will not be stopped until Union Government has come into existence and decided on its future policy in the matter on the assumption that this take place within a year from now."

The Government of India has since legislated to enable it to prohibit emigration to any country "when the Governor-General has reason to believe that sufficient ground exists for prohibiting emigration."

The reply to the Indians was therefore in substance that the Dealers' Licences Act had been amended and that nothing could then be done with regard to the other detailed grievances, but hope for the future has been given by reference to Section 147 of the South Africa Act under which the Immigration Restriction Act, and the position of Indians generally will fall into the province of the Union Government, in whose decisions His Majesty's Government "trust that a broader and more generous spirit will prevail."

#### *Southern Rhodesia.*

In 1908 the Southern Rhodesia Legislative Council passed an Ordinance to restrict the immigration of Asiatics, and to provide for the registration of Asiatics already resident. The principles underlying the Ordinance were

the same as those underlying the Transvaal legislation, and the Indians petitioned against it. Lord Crewe, in a despatch dated 12th December, 1908, declared that the case of the Transvaal, which had inherited the differential legislation of the South African Republic, was exceptional, that His Majesty's Government had only agreed reluctantly to the legislation passed unanimously by both Houses in a responsibly-governed Colony, that Southern Rhodesia was not in possession of Responsible Government, and that the High Commissioner and Secretary of State had greater responsibility in assenting to legislation; Lord Crewe, therefore, refused to authorise the High Commissioner to assent.

In June, 1909, the Legislative Council passed a Resolution that

"This Council records its great regret at the decision of the Secretary of State with respect to the Ordinance providing the conditions under which Asiatics may be permitted to enter and reside in Southern Rhodesia, and respectfully requests that His Majesty's Government may be moved to reconsider the question, as this Council considers the present conditions are detrimental to the interests of the white race, and a cause of serious danger to the progress and welfare of the country."

but Lord Crewe in a despatch dated 23rd July, 1909, refused to reconsider his decision.

16th July, 1910.

5,178/10.

See replies  
to Anglia,  
29,361/09,  
39,208/09,  
and to  
petition on  
39,208/09.

39,832/08.



CO 886/4/7

27

27



Printed for the use of the Dominions Department of the Colonial Office.

Dominions

No. 27.

CONFIDENTIAL.

PROPOSED REORGANISATION OF THE  
COLONIAL OFFICE.

Cd. 8795.

THE present organisation of the Colonial Office, as altered in 1907 in accordance with the terms of Lord Elgin's despatch of the 21st September, 1907, was the result of the discussion at the Colonial Conference of that year, which was embodied in Resolution 1 of the Conference.

The Resolution itself reads as follows :—

" That it will be to the advantage of the Empire if a  
" Conference, to be called the Imperial Conference, is  
" held every four years, at which questions of common  
" interest may be discussed and considered as between  
" His Majesty's Government and His Governments of  
" the self-governing Dominions beyond the seas. The  
" Prime Minister of the United Kingdom will be *ex officio*  
" President and the Prime Ministers of the self-governing  
" Dominions *ex officio* members of the Conference. The  
" Secretary of State for the Colonies will be an *ex officio*  
" member of the Conference and will take the chair in  
" the absence of the President. He will arrange for  
" such Imperial Conferences after communication with  
" the Prime Ministers of the respective Dominions.

" Such other Ministers as the respective Governments  
" may appoint will also be members of the Conference—  
" it being understood that, except by special permission  
" of the Conference, each discussion will be conducted  
" by not more than two representatives from each  
" Government, and that each Government will have  
" only one vote.

" That it is desirable to establish a system by which  
" the several Governments represented shall be kept  
" informed during the periods between the Conferences  
" in regard to matters which have been, or may be,  
" subjects for discussion by means of a permanent  
" secretarial staff charged, under the direction of the  
" Secretary of State for the Colonies, with the duty of  
" obtaining information for the use of the Conference,  
" of attending to its Resolutions, and of conducting  
" correspondence on matters relating to its affairs.



"That upon matters of importance requiring consultation between two or more Governments which cannot conveniently be postponed until the next Conference, or involving subjects of a minor character or such as call for detailed consideration, subsidiary Conferences should be held between Representatives of the Governments concerned specially chosen for the purpose."

But it is necessary for the full appreciation of this Resolution and for a clear understanding of the reorganisation effected by Lord Elgin's despatch to recite the history of Mr. Lyttelton's proposal for an Imperial Council and auxiliary Commission made in his despatch of the 20th April, 1905, and also to indicate the actual course of the discussion on the Conference which led to the framing of the Resolution.

Pp. 1-5,  
Cd. 2785.

Mr. Lyttelton's proposal was that the title "Colonial Conference" should be discarded, and the name "Imperial Council" substituted for it, and he wished the future composition of this Council to be discussed at the next Conference. He also suggested that there should be a permanent Commission representing all the States concerned, to which the Imperial Council might refer questions for examination and report. The Commission would, it was proposed, consist of a permanent nucleus of members nominated in a certain proportion by His Majesty's Government and the Colonial Governments—their nomination would rest with the Governments which they respectively represented. The Commission should have an office in London and an adequate secretarial staff, the cost of which His Majesty's Government would defray.

The answers to Mr. Lyttelton's despatch from Australia, Cape, and Natal were favourable to his suggestions. But Canada's reply intimated that the term "Imperial Council" indicated a more formal assemblage than the Conferences of the past, and suggested "a permanent institution which, endowed with a continuous life, might eventually come to be regarded as an encroachment upon the full measure of autonomous legislative and administrative power now enjoyed by all the self-governing Colonies." As regards the second suggestion, that of a Commission, Canada thought that such a Commission "might conceivably interfere with the working of responsible Government."

P. 14,  
Cd. 2785.

P. 15,  
Cd. 2785.

P. 4,  
Cd. 2975.

In deference to the views of Canada, Mr. Lyttelton informed the various self-governing Colonies that it seemed desirable to postpone further discussion until the next Conference. After the present Government assumed office, Lord Elgin, in a despatch of the 22nd February, 1906, informed the several Governors and Governors-General that he did not feel himself called upon to adopt the recommendation of Mr. Lyttelton's proposals, but that the scheme should be freely discussed when the Conference met.

When the Conference met in 1907 there came before it a resolution proposed by Australia adopting Mr. Lyttelton's proposals to a considerable extent and a more general resolution proposed by New Zealand in favour of the establishment of an Imperial Council.

P. 6,  
Cd. 3337.

#### *Australian Resolution.*

"That it is desirable to establish an Imperial Council, to consist of Representatives of Great Britain and the self-governing Colonies, chosen *ex-officio* from their existing Administrations.

"That the objects of such Council shall be to discuss at regular Conferences matters of common Imperial interest, and to establish a system by which members of the Council shall be kept informed during the periods between the Conferences in regard to matters which have been or may be subjects for discussion.

"That there shall be a permanent secretarial staff charged with the duty of obtaining information for the use of the Council, of attending to the execution of its Resolutions, and of conducting correspondence on matters relating to its affairs.

"That the expenses of such a staff shall be borne by the countries represented on the Council in proportion to their populations."

P. 8,  
Cd. 3337.

#### *New Zealand Resolution.*

"That it would be to the advantage of the Empire and facilitate the dealing with questions that affect the over-sea Dominions, if an Imperial Council were established to which each of the self-governing Colonies should send a representative."

P. 29,  
Cd. 3523.

Mr. Deakin, on behalf of Australia, initiated the discussion on the subject, and at once deferred to the Canadian suggestion that the term "Imperial Conference" should be accepted instead of "Imperial Council," as Australia had no wish to alter the existing authority or powers



of the Conference. Sir Wilfrid Laurier elicited from Mr. Deakin that the idea of a Council as Mr. Lyttelton had it in mind, *i.e.*, an Imperial Council composed as the Conference and assisted by a permanent body similar to the Imperial Defence Committee was not pressed by Mr. Deakin. But Mr. Deakin advocated the appointment of a Secretariat by the Conference, to be the agency by which the work of the Conference would be prepared and its resolutions acted upon. He suggested that the Secretariat should be under the Prime Minister, and went on to propose that the Colonial Office should deal solely with the Crown Colonies, and that any communications between the self-governing Dominions and the mother country should pass through another channel, preferably the Prime Minister. Sir Wilfrid Laurier expressed the opinion that the Prime Minister was too busy a man to be burdened with further duties, and said "the Colonial Office, which is already divided into P. 50. Departments, is the proper Department to deal under Ministerial responsibility with the self-governing Colonies or Crown Colonies."

Sir Joseph Ward desired that the self-governing Colonies should be put under a separate category with a separate administration within the Colonial Office, and wished the application of the term "Colony" to the self-governing possessions to P. 51. cease. Whether the body was to be called "Imperial Conference" or "Imperial Council" he wished it to consist of the Prime Ministers of the self-governing Colonies, the Prime Minister of England, and the Secretary of State for the Colonies. He was not favourable to the creation of a *separate* office as an intermediary between the respective Prime Ministers during the recesses.

General Botha took the same view as Sir W. Laurier in regard to the adoption of the designation "Imperial Council," thinking it might lead to an infraction upon the rights of responsible government. On the question of the Secretariat P. 55. he did not consider Mr. Deakin's suggestion quite happy. He wanted to maintain the bond of connection as directly as possible between the Colonial Office and the self-governing possessions.

After these expressions of opinion had been given, Lord Elgin, as Chairman, indicated that if the Conference desired the Colonial Office to

provide for the continuity of work between its meetings, he would do his best to arrange to meet what was required. Sir Wilfrid Laurier thereupon gave a fuller explanation of his view that the Secretariat must not be an independent body and of his doubts whether there should be such a body at all. Mr. Deakin immediately afterwards indicated his desire that the Secretariat under the Prime Minister should deal with all the important despatches involving constitutional questions relating to the self-governing communities.

On the next day Lord Elgin announced that the Prime Minister would be ready to become *ex officio* President of the Conference, but that the Prime Minister could not agree to an arrangement for putting the Secretariat under his control as President of the Conference.

Sir Wilfrid Laurier was entirely in agreement with this decision, his criticism being that the secretarial staff would, under Mr. Lyttelton's proposal, have been under no control, whereas, in his opinion, the one thing necessary was that it should be under direct ministerial responsibility. Mr. Winston Churchill also pointed out that from the inner working of the Colonial Office there would be almost insuperable difficulty in the classification of the different possessions of the Empire exclusively according to status. "There must be a geographical classification as well, and it would involve a great duplication of machinery if separate machinery altogether were set up in the desire to place the Secretariat entirely under the control of the Prime Minister."

Lord Elgin's definite statement as to what he undertook to do on behalf of His Majesty's Government to provide a link between Conference and Conference subject to Ministerial responsibility is quoted in the despatch in which he sets out the reorganisation of the Colonial Office.

The statement was received without definite objection on the part of any one except Mr. Deakin. Sir Joseph Ward specially welcomed it. Mr. Deakin held that the term "secretarial staff" had now lost its meaning, because what was now intended was not a separate body, but a branch of the Colonial Office, and he wanted to omit it. But Sir Joseph Ward, although agreeing that Mr. Deakin's proposal would probably more



correctly indicate what the actual decision was, had a preference for indicating a permanent secretarial staff, and the words were left in.

The resolution of the Conference accordingly in set terms has made the Secretary of State for the Colonies Chairman of the Conference in the absence of the President, and places the secretarial staff dealing with the business of the Conference in the interval between its meetings under the charge of the Secretary of State for the Colonies.

Lord Elgin's despatch on the reorganisation of the Colonial Office explained how he had carried out his pledge to the Conference, and made the suggestion that the High Commissioner or Agent-General should act as a channel of communication on matters of routine between the Secretary to the Conference and the Colonial Ministers as an alternative to communications passing between the Secretary and the Ministries under flying seal between the Secretary of State and the Governor-General and Governor. No reply has been received from Canada or New Zealand to Lord Elgin's despatch, though the Governor-General and Governor have been reminded.

Mr. Deakin's reply on behalf of Australia was that apparently all that had been done was to re-name a sub-department of the Colonial Office, and that the compromise adopted by the resolution failed to meet the wishes of the Australian Government in three respects, for the compromise submitted by Australia

- (a.) Contemplated an organisation entirely separated from the Colonial Office;
- (b.) Proposed that the officers should be introduced by or on behalf of the Conference;
- (c.) Provided that the expenses of the staff should be borne by the country represented.

Mr. Deakin added that Ministers deferred their suggestions as to the position of the High Commissioner for the Commonwealth in relation to the secretarial branch of the Dominions sub-department of the Colonial Office.

The Cape Colony, Transvaal, and Natal approved of the arrangements made by Lord Elgin, and suggested that the Agents-General should be brought into relations with the Secretariat.

This matter has not been taken up in view of

the silence of Canada and New Zealand and of the answer from Australia. It is one which is likely to present difficulty. There has hitherto been no indication that Canada would wish to utilise her High Commissioner in this way.

The decision upon the issue of a complete separation between the work of the self-governing Dominions and the Crown Colonies depends upon the answer to the queries:—

1. Is it to the advantage of the Public Service (apart from the wishes of the Dominions) that complete separation should take place?
2. Is it the desire of the Dominions that complete separation should take place; and could complete separation be carried out without formal discussion of the matter at the next Imperial Conference, and without an agreement causing the Dominion Prime Ministers to request His Majesty's Government to make the separation, and without ascertaining in a formal manner that the proposed new arrangements will be in accordance with the wishes of the Dominions?

As to (1) it will be no easy task to effect complete separation, for there is a great deal of work which is common to the Crown Colonies and to the self-governing Dominions, and which can be transacted for both by the same machinery as long as there is one office and one Secretary of State. If there are to be two offices, the machinery will have to be duplicated, and a good deal of extra work and difficulty and liability to confusion may be created.

It is practically certain that division would not be contemplated unless it were supposed to respond to the wishes and demands of the Dominions. The present arrangement is quite a sufficient division from the point of view of the Home Government. Moreover, if there is to be complete separation on the principle of *status*, there is inconsistency in keeping Fiji and the South African Protectorates with the Dominions Department. The real issue, therefore, is how far the Dominions are dissatisfied with the present arrangement, and what they would desire to have in its place.

We must revert to the last Conference for the last authoritative expression of the wishes of the



Dominions as a body. Mr. Deakin began by suggesting that the Prime Minister should be the titular head of the Conference. This was accepted. Mr. Deakin suggested that the work of the self-governing Dominions, or at least all the important work, should be undertaken by the Prime Minister, and Sir Joseph Ward indicated agreement with him. Sir Wilfrid Laurier did not agree; he did not see how the Prime Minister could undertake the work, and said that the Colonial Office, which was divided into departments, was the proper office to deal with both the self-governing Dominions and the Crown Colonies. Mr. Deakin, supported by Dr. Jameson, advocated a composite Secretariat, under the Prime Minister, in connection with the Conference. Sir Wilfrid Laurier opposed this on the ground that you must have Ministerial responsibility fixed upon one person, and not the divided control of the various Prime Ministers, and accordingly the Secretariat was placed under the charge of the Secretary of State for the Colonies.

The first Resolution of the last Conference has accordingly placed the Secretary of State in the position of Chairman of the Conference, and has charged him with responsibility for the Secretariat, and the question arises whether a change could well be made before the next Conference looking to the Resolution and to what happened at the last Conference, and having regard also to the two facts that Mr. Deakin is out of office and that the Union of South Africa has now been established, with a new voice in the Conference.

Any arrangement whereby the Prime Minister became titular head of the department dealing with the Dominions would compel devolution of the real duties upon some other Minister, and it may be expected that Dominion Prime Ministers would consider that they ought to come together and discuss in common council a change of so far-reaching a character.

So far as His Majesty's Government are concerned, they would find difficulty in defending in Parliament the assumption by the Prime Minister of this new burden (if he undertakes it) without a very full explanation as to His Majesty's Government having satisfied themselves that the arrangements for relieving the Prime Minister are adequate and are acceptable to the Dominions.

Complete separation is *practicable*, but the question is whether it is practicable on terms which will be satisfactory to His Majesty's Government and the Dominions.

It is a new issue. The Dominions have not yet spoken, but if they should speak, the Dominions would appear to desire the Prime Minister. They will not be able to secure him because he is too busy to perform the official and social duties which would be thrown upon him.

The step would be regarded as a sign of a forward policy. If, as seems probable, the change would lead to the separate smaller office and the separate subordinate Ministers wishing to justify their separate existence by exceptional and increased activity, there is the danger that there would be greater interference with the self-governing Dominions and efforts to lead and to urge forward. So far the success of the administration of the self-governing Dominions has been due to the Colonial Office adopting the policy of non-interference and not forcing the pace, and so far the Conferences of Prime Ministers have not given indication that there is any sufficient reason for modifying or reversing this policy.

The retention of the present arrangement has the advantage of having as the Minister for the Dominions a prominent statesman of the party in power, not exclusively occupied with their affairs and therefore not likely to be too active or to meddle unduly; and the members of the Department would still work more in the shade than could be possible with a separate Office. There would be greater ease of interchange of officers with the Crown Colonies Department, and the advantage of more minds being brought to bear upon matters affecting all the British possessions in common would not be sacrificed.

Even if the Prime Minister were only titular head, there would be the disadvantage that the subordinate Minister representing him in the business of the Dominions might commit him and His Majesty's Government in some important matter, and there would be no court of appeal. At present the Secretary of State for the Colonies does not decide on matters of the highest importance without securing the assent of the Secretary of State for Foreign Affairs and the Prime Minister, if necessary.

The attitude of Sir Wilfrid Laurier in par-



ticular needs to be borne in mind. His policy is that of autonomy for Canada, and of greater autonomy, if possible, in the future. And he would, therefore, be likely to oppose any change which he thought would either directly or indirectly impair or fetter that autonomy. He was opposed to Mr. Lyttelton's idea of a permanent Commission attached to the Imperial Conference, and he might accordingly be expected not to favour any analogous permanent body composed of the High Commissioners acting as quasi-Plenipotentiaries on behalf of their Governments. Nor would Australia be likely to favour such a body, judging from Mr. Deakin's attitude at the last Conference. The High Commissioners can always be employed *ad hoc* in regard to any particular subject for consultation and common discussion.

H. W. J.

July 14, 1910.

20 886/4/8

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28



Dominions  
No. 28.

CONFIDENTIAL.

FURTHER CORRESPONDENCE

[January, 1910, to June, 1911]

RELATING TO THE

PECUNIARY CLAIMS TREATY WITH THE  
UNITED STATES OF AMERICA.

*(In continuation of Dominions No. 20, continued by Dominions No. 41.)*



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| 1          | The Governor ...                       | New Zealand, Telegram.          | (Rec. Jan. 24)          | States that the Government of New Zealand will co-operate with the Imperial Authorities in the matter of the Webster claim, but do not admit any liability, which question can be settled, if necessary, on constitutional grounds; and that a written statement by the new Attorney-General, giving his view of the position, will be forwarded. | 1     |
| 2          | To the Governor ...                    | New Zealand, Confidential.      | January 28              | Acknowledges the receipt of No. 1, from which it is understood that, subject to the conditions prescribed, the New Zealand Government are willing that the whole claim should go to arbitration on its merits before the Pecuniary Claims Commission.   | 1     |
| 3          | To Foreign Office ...                  | —                               | January 28              | Transmits copy of No. 1; states that Lord Crewe does not consider it necessary to communicate further at present with the New Zealand Government on the question of liability.  | 2     |
| 4          | Foreign Office ...                     | Confidential.                   | February 18             | Transmits copy of a despatch from His Majesty's Ambassador at Washington respecting the progress of the negotiations; enquires whether a reply has been received from the Canadian Government in regard to the Cayuga Indians claim; and whether Mr. Bryce may be informed that the terms proposed are accepted by His Majesty's Government.      | 2     |
| 5          | Sir E. Grey to Mr. Bryce (Washington). | (69)                            | February 18             | Transmits copy of No. 4, and asks for further information.  | 6     |
| 6          | To the Governor-General.               | Canada, Telegram, Confidential. | February 25             | Asks for the views of his Government on the arbitration of the claim of the Cayuga Indians.   | 7     |
| 7          | Foreign Office ...                     | —                               | February 28             | Transmits copy of a despatch from Mr. Bryce, enclosing copy of a note which he had addressed to the United States Secretary of State, asking that the approved claims should be submitted to Congress.  | 7     |
| 8          | The Governor-General.                  | Canada, Confidential.           | March 7 (Rec. Mar. 19.) | Transmits copy of a minute of the Privy Council, stating that Ministers see no reason why, in preferring a claim on behalf of Newfoundland in respect of fishery privileges enjoyed by United States fishermen in excess of those conferred on them by the Treaty of 1818, the claim might not be so formulated as to include Canada.             | 8     |

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| 9          | To Foreign Office ...    | —                 | April 1        | Transmits copy of No. 8, and states that Lord Crewe fears that the United States Government will not be ready to consider favourably the insertion of this extremely vague claim, but would be glad if Sir E. Grey would bring the matter to the notice of His Majesty's Ambassador at Washington.   | 9     |
| 10         | Foreign Office ...       | Confidential.     | April 2        | Transmits copy of a further despatch from His Majesty's Ambassador at Washington on the progress of the negotiations; points out that the United States Government have now offered to resume negotiations on the old basis of a "schedule" instead of an "open" arbitration; and enquires whether the Canadian Government are now prepared to agree to the proposed arbitration of the preliminary questions in the Cayuga Indians claim. | 10    |
| 11         | Ditto ...                | —                 | April 4        | Transmits copy of a despatch from Mr. Bryce enclosing copy of a despatch from the United States Government, agreeing that the "approved" pecuniary claims against the United States Government should be recommended to Congress without prejudice to the concurrent negotiations for their arbitration, but declining to include the claims of Mr. Wrathall and that for lumber cut in the Yukon.   | 14    |
| 12         | To the Governor-General. | Canada, Telegram. | April 6        | Asks for the decision of the Canadian Government as to arbitration of Cayuga Indians claim.  | 16    |
| 13         | The Governor-General.    | Canada, Telegram. | (Rec. April 8) | States that the Canadian Ministers approve the proposal in the Secretary of State's confidential despatch of 25th November, 1909, but are unable to see any strong reason for the requirement of agreement by both Agents, and suggest the alterations specified.  | 16    |
| 14         | Foreign Office ...       | —                 | April 9        | Transmits copy of a despatch to Mr. Bryce instructing him to approach the United States Government as to preferring a claim by Canada in respect of fishery privileges enjoyed by United States fishermen in excess of those conferred by the Treaty of 1818.  | 16    |
| 15         | To Foreign Office ...    | —                 | April 19       | Transmits copy of No. 13, and states that Lord Crewe does not consider it necessary to press for the retention of the phrase "at the request of both Agents" if the United States Government concur in its omission, and would suggest that the United States Government should be informed that the whole of the Webster claim should go to arbitration on the conditions stated.   | 17    |



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| 16         | To the Governor-General. | Canada, Confidential. | April 21                | Requests that Ministers may be informed that Mr. Bryce has been directed to approach the United States Government with the object of preferring a claim on behalf of Canada in respect of fishery privileges enjoyed by United States fishermen in excess of those conferred by the Treaty of 1818.   | 17    |
| 17         | Foreign Office ...       | —                     | April 22                | Transmits a paraphrase of a telegram to His Majesty's Ambassador at Washington conveying the conditions on which His Majesty's Government agree to the reference of the Cayuga Indians and Webster claims to arbitration.   | 18    |
| 18         | The Governor-General.    | Canada, Confidential. | April 8 (Rec. Apr. 25.) | Confirms No. 13 and encloses copy of an approved minute of the Privy Council on which it was based.   | 18    |
| 19         | Foreign Office ...       | —                     | April 29                | Transmits copy of a despatch from Mr. Bryce at Washington reporting on the slow and difficult progress of the negotiations.   | 19    |
| 20         | To Foreign Office ...    | —                     | April 30                | Transmits copy of No. 18 and draws attention to the fact that Canadian agreement to the draft article suggested by Mr. Bryce is conditional on the acceptance of the omissions suggested.   | 20    |
| 21         | Foreign Office ...       | —                     | May 5                   | Transmits copy of a telegram to Mr. Bryce communicating purport of No. 18.  | 20    |
| 22         | Ditto ...                | Confidential.         | June 1                  | Transmits copy of a despatch from His Majesty's Ambassador at Washington enclosing a fresh draft agreement for a proposed Pecuniary Claims Convention with United States, and proposes, for the reasons stated, to authorize Mr. Bryce to sign it at once.  | 21    |
| 23         | Ditto ...                | —                     | June 7                  | Transmits paraphrase of a telegram from His Majesty's Ambassador at Washington asking for an answer to the enclosure in No. 22.   | 22    |
| 24         | To Foreign Office ...    | —                     | June 8                  | Agrees that His Majesty's Ambassador at Washington should be authorized to sign the Convention at once on the understanding that acceptance does not involve acceptance of the schedules without further consideration, and points out that the draft Convention goes beyond the General Arbitration Treaty of 1908, in regard to the prior concurrence of a self-governing Dominion. | 22    |
| 25         | Foreign Office ...       | —                     | June 9                  | Transmits copy of a telegram to Mr. Bryce at Washington, authorizing him to sign the Convention at once on the distinct understanding that signature does not involve acceptance of schedules without further consideration.  | 23    |

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| 26         | The Governor-General.                      | Canada, Confidential. | June 8 (Rec. June 18.) | Transmits copy of a despatch to His Majesty's Ambassador at Washington, covering copies of an approved minute of the Privy Council for Canada, and conveying the views of Ministers on the draft Agreement; and points out that there is considerable opposition on the part of the Canadian Ministers to the proposal that the Tribunal shall not be bound by technical rules of evidence. | 33    |
| 27         | Sir Edward Grey to Mr. Bryce (Washington). | (198)                 | June 23                | Transmits copy of a question asked in the House of Commons with regard to the signature and publication of the Pecuniary Claims Convention; presumes publication will not take place until the Senate has passed the Convention.  | 34    |
| 28         | To Foreign Office ...                      | —                     | June 23                | Transmits copy of No. 26, and enquires whether the Treaty has yet been signed, and what reply has been returned by His Majesty's Ambassador at Washington to the objections of the Canadian Government to the wording of the Treaty.  | 35    |
| 29         | Foreign Office ...                         | —                     | June 27                | Transmits copy of a telegram to Mr. Bryce asking whether the Convention has been signed.  | 35    |
| 30         | Ditto ...                                  | —                     | June 28                | Transmits copy of a telegram from Mr. Bryce stating that the Convention has not yet been signed; also a copy of the Treaty showing the amendments which Sir E. Grey considers desirable, and states that no action will be taken pending the receipt of the despatch to the Canadian Government which Mr. Bryce is sending home.  | 36    |
| 31         | Ditto ...                                  | —                     | July 2                 | Transmits copy of a telegram from Mr. Bryce explaining the position.  | 36    |
| 32         | Ditto ...                                  | —                     | July 2                 | Transmits copy of a telegram to Mr. Bryce stating that the proposed amendments to the Convention will be communicated to him as soon as the assent of the Canadian Government has been received.  | 37    |
| 33         | Ditto ...                                  | —                     | July 6                 | Transmits copy of a despatch from Mr. Bryce enclosing copies of correspondence with the Governor-General and Acting Governor-General of Canada, relating to the objections of the Dominion Ministers to the proposal in the most recent Draft Agreement that the Tribunal shall not be bound by technical rules of evidence.  | 37    |
| 34         | The Acting Governor-General.               | Canada, Telegram.     | (Rec. July 6)          | Embodies copy of a message to Mr. Bryce conveying the consent of the Canadian Ministers to the draft of the Agreement.  | 39    |



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| 35         | Foreign Office ...       | —                       | July 11 | Transmits copy of a telegram to Mr. Bryce instructing him to communicate to the Newfoundland Government his despatch showing the amendments desired by Canada, and of his reply reporting that he has done so; observes that the Legal Adviser to the Foreign Office will discuss, at the Hague, with the representatives of Canada, Newfoundland, and the United States the amendments proposed by His Majesty's Government.  | 39    |
| 36         | Ditto ...                | —                       | July 22 | Transmits copy of a report by the Assistant Legal Adviser to the Foreign Office on the result of his discussions at the Hague with the representatives of Canada, Newfoundland, and the United States; proposes to authorize the signing of the Convention without waiting for the formal consent of the Canadian Government; submits the draft of a telegram to Washington, and suggests that telegrams respecting the text of the amendments may be sent to Canada and Newfoundland. | 40    |
| 37         | Ditto ...                | —                       | July 27 | Transmits copy of a despatch from Mr. Bryce reporting on the progress of the negotiations and enclosing copy of a despatch to the Governor-General of Canada on the subject of the suggested publication of treaties when they are submitted to the Senate.  | 47    |
| 38         | To the Governor-General. | Canada, Telegram.       | July 27 | Specifies amendments which His Majesty's Government desire to make in the draft agreement; states that Mr. Aylesworth and Mr. Newcombe have expressed approval of the agreement as amended; earnestly hopes that formal approval of the document will be given within a week.  | 49    |
| 39         | To the Governor ...      | Newfoundland, Telegram. | July 27 | States amendments which His Majesty's Government desire to make in draft agreement; adds that Sir E. Morris has seen and approved, and trusts that formal concurrence of Newfoundland Government may be sent at once, and British Ambassador at Washington informed.   | 51    |
| 40         | To Foreign Office...     | —                       | July 28 | Acknowledges the receipt of No. 36; regrets that the concurrence of Canada cannot be assumed until a formal and an official expression of consent has been received, and encloses copies of Nos. 38 and 39.  | 51    |
| 41         | Foreign Office ...       | —                       | July 29 | Transmits copy of a telegram to Mr. Bryce informing him that the proposed amendments have been telegraphed to Newfoundland and Canada, with a request that they will intimate their formal approval as soon as possible, and instructing him to endeavour to secure the assent of the State Department.  | 51    |

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| 42         | The Acting Governor.                       | Newfoundland, Telegram. | (Rec. Aug. 2)                            | States that his Ministers concur in the amendments to the Convention, and that His Majesty's Ambassador at Washington has been so informed.   | 52    |
| 43         | To the Governor-General.                   | Canada, Telegram.       | August 5                                 | States that, in the absence of any reply from the Canadian Government, His Majesty's Ambassador at Washington is being instructed to invite the United States Government to accept the amendments desired, and that it is desired to secure the signature of the Convention before Mr. Bryce leaves for South America on 25th August. | 52    |
| 44         | Foreign Office ...                         | —                       | August 9                                 | Transmits copies of a telegram to His Majesty's Ambassador at Washington instructing him to invite the United States Government to accept the amendments desired, and of one from Mr. Bryce asking that Canada may be pressed for a reply.  | 52    |
| 45         | The Deputy Governor-General.               | Canada, Telegram.       | (Rec. Aug. 12)                           | States that the Canadian authorities concur in the amendments proposed and that Mr. Bryce has been informed.  | 53    |
| 46         | Foreign Office ...                         | —                       | August 22                                | Transmits copy of a telegram from Mr. Bryce reporting that he and the United States Secretary of State have signed the Convention.  | 54    |
| 47         | Ditto ...                                  | —                       | August 22                                | Transmits copy of a telegram to Mr. Bryce congratulating him on the signature of the Convention.  | 54    |
| 48         | To the Governor ...                        | Newfoundland, Telegram. | August 27                                | Observes that he will no doubt have learned from His Majesty's Ambassador at Washington that he signed the Convention on 21st August.   | 54    |
| 49         | Mr. Bryce (Washington) to Sir Edward Grey. | (184)                   | August 29 (Rec. Foreign Office Sept. 6). | Transmits copy of the Agreement as signed by Mr. Knox and himself.  | 55    |
| 50         | Foreign Office ...                         | —                       | September 10                             | Transmits copy of a despatch from Mr. Bryce reporting the signature of the Convention, and enclosing copy of the Memorandum communicating to the United States Government the corrections desired.  | 55    |
| 51         | Ditto ...                                  | —                       | September 16                             | Transmits copy of a despatch from Mr. Bryce relating to the question of the preparation of the Schedules of Claims.   | 60    |
| 52         | Ditto ...                                  | —                       | September 27                             | Requests that the views of the Canadian and Newfoundland Governments should be ascertained as to the presentation of the claims affecting each, and as to the presentation of hypothetical claims.  | 61    |
| 53         | To Foreign Office ...                      | —                       | September 27                             | Acknowledges the receipt of Nos. 50 and 51; presumes that Mr. Bryce has communicated with the Canadian Government in the sense of No. 51.   | 62    |



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| 54         | Foreign Office ...                     | —  | September 28 | Transmits copies of the agreement with the United States Government and suggests that the various Colonial Governments be asked to notify claims without delay; proposes that every known claim be included in the first schedule; Sir Edward Grey does not consider it necessary that No. 51 should be communicated to the Canadian Government.                                      | 62    |
| 55         | To the Governors-General and Governor. | Australia, New Zealand, Union of South Africa, Confidential. | October 10   | Transmits copies of the agreement with the United States Government; draws attention to the provision relating to the concurrence of the Dominions in the inclusion of any claims affecting their interests; requests that any claims may be sent on without delay.   | 63    |
| 56         | To the Governor-General and Governor.  | Canada, Newfoundland, Confidential.                          | October 10   | Transmits copies of the special agreement with the United States Government; presumes that Ministers will desire to conduct the preparation and argument of their own cases, and that in drawing up the list of claims they will consider whether it is desirable to include any hypothetical claims.   | 63    |
| 57         | To Foreign Office...                   | —  | October 10   | Transmits copies of Nos. 55 and 56, and points out that if the New Zealand Government so desire they must be permitted to prepare and present the case of the defence to the Webster claim.   | 64    |
| 58         | Foreign Office ...                     | —  | October 20   | Asks whether the statement of the New Zealand Attorney-General mentioned in the enclosure to No. 3 has been received; prefers with reference to Nos. 55 and 56 that negotiations with regard to the schedules should be conducted through His Majesty's Government.   | 64    |
| 59         | To Foreign Office...                   | —  | November 1   | Agrees that the Dominion Governments should submit full lists of claims, but suggests that they should be allowed to conduct the negotiations with the British Ambassador at Washington, and that the latter should keep the Foreign Office fully informed of their progress; refers to No. 57 as to the Webster claim.   | 65    |
| 60         | Foreign Office ...                     | —  | November 18  | Forwards copy of despatch to His Majesty's Chargé d'Affaires at Washington asking for his views as to the appointment of a British Arbitrator and as to the desire of the United States Government that the agreement should not go before the Senate until the first schedule has been settled, which latter cannot be done until the the Agreement has been approved by the Senate. | 65    |

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| 61         | Foreign Office ...    | —                        | December 12                              | Transmits copy of a despatch from His Majesty's Chargé d'Affaires at Washington respecting the appointment of the Dominions representatives to the Tribunal and the preparation of the schedule, and copy of a telegram sent in reply, and submits Sir E. Grey's views thereon and on the method of dealing with United States claims.  | 66    |
| 62         | Ditto ...             | —                        | December 28                              | States that Mr. Bryce considers it would be unwise to press for the inclusion of all the British claims in the first schedule; proposes to give him discretion in the matter; encloses a list of the claims to be presented, and a list of those to be dropped.   | 70    |
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| 63         | To Foreign Office...  | —                        | January 6                                | States the views of the Colonial Office on the constitution of the Tribunal and the composition of the schedule of British claims, and asks to be allowed an opportunity of expressing an opinion on any claim affecting the Crown Colonies before its inclusion in the schedule.   | 73    |
| 64         | The Governor-General. | Australia, Confidential. | December 13, 1910. (Rec. Jan. 16, 1911.) | States, in reply to No. 55, that the Federal Government have no claims against United States of America.  | 75    |
| 65         | Ditto ...             | Canada, Confidential.    | January 3 (Rec. Jan. 16.)                | Transmits copy of a minute from Ministers requesting that urgency may be used in the settlement of the schedules of claims.   | 75    |
| 66         | Foreign Office ...    | —                        | January 28                               | Transmits copy of a telegram to Mr. Bryce asking whether he is preparing the first schedule of claims or whether he requires assistance from home.  | 76    |
| 67         | Ditto ...             | —                        | January 28                               | Concurs in the proposal to inform the New Zealand Government that His Majesty's Government will pay if an adverse decision is given in the Webster case; considers the appointment of three Commissioners undesirable, and asks that the matter may not be pressed; hopes that the Brown and Union Bridge claims will be allowed to go before the Commission if the United States Government include them in their schedule; encloses a memorandum showing the present position of the United States claims against Crown Colonies and Protectorates. | 76    |
| 68         | Ditto ...             | —                        | February 8                               | Forwards despatch from Mr. Bryce respecting the negotiations for drawing up the schedule of claims and the appointment of the neutral Commissioner; recommends the appointment of M. Fromageot in this capacity, and submits proposals for the remuneration of the Commissioners and the expenses of the arbitration.   | 79    |



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| 69         | To Foreign Office ...       | —                 | February 10 | Agrees that a separate British judge need not be appointed for the United Kingdom or the Crown Colonies; enquires whether it is desired that the Canadian Government should at once be approached with the suggestion that the Canadian Commissioner should deal with claims other than Canadian; agrees that the Union Bridge case should go before the Commission, and the Brown case if the Union of South Africa is prepared to accept responsibility. | 81    |
| 70         | Ditto ... ..                | —                 | February 14 | Transmits draft despatch to the Governor of New Zealand regarding the Webster claim; presumes the consent of the Treasury will be obtained to the proposal that His Majesty's Government should be responsible for the cost of any adverse award.  | 82    |
| 71         | Ditto ... ..                | —                 | February 15 | Transmits drafts of telegrams to Canada and Newfoundland on the lines suggested in No. 68, but with a modification as to the continuance of the payment of the salary of a Canadian judge while acting as arbitrator.  | 83    |
| 72         | Foreign Office ...          | —                 | February 16 | Transmits copies of correspondence with Mr. Bryce on the subject of the claims to be included in the first schedule of the Convention.   | 83    |
| 73         | Ditto ... ..                | —                 | February 17 | Concurs in the drafts of telegrams to Canada and Newfoundland enclosed in No. 71, with an amendment giving to the Government of Newfoundland an opportunity of stating that they would be satisfied with a Canadian Commissioner for the Newfoundland claims.  | 85    |
| 74         | Ditto ... ..                | —                 | February 17 | Transmits copy of a telegram from Mr. Bryce to the Governor-General of Canada setting forth the claims agreed to by the United States Government for inclusion in the first schedule.  | 86    |
| 75         | Ditto ... ..                | —                 | February 17 | Expresses the opinion that in the circumstances no liability attaches to the Union of South Africa Government in respect of the Brown case; suggests that the Union Government should be requested to furnish any assistance and information which may be required in the preparation of the answer to the United States case.   | 86    |
| 76         | Foreign Office to Treasury. | —                 | February 17 | States circumstances in which it is proposed that His Majesty's Government should assume liability in the Brown, Union Bridge Co., and Webster claims.   | 87    |
| 77         | Foreign Office ...          | —                 | February 18 | States that the Treasury are being pressed to agree to the inclusion of the Brown, Union Bridge, and Webster claims; asks that the Newfoundland and Canadian Governments may be pressed to accept the schedule, and asks for Mr. Harcourt's views on the terms of submission.  | 89    |

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| 78         | To the Governor-General.              | Canada, Telegram.               | February 18    | Suggests that the British Commissioner for all claims other than those of Newfoundland should be a Canadian judge, and proposes that His Majesty's Government should pay half of the expenses of the Neutral Commissioner and of all other expenses; states that the appointment of M. Fromageot as Neutral Commissioner is now proposed.   | 90    |
| 79         | To the Governor ...                   | Newfoundland, Telegram.         | February 18    | States that it is now proposed to appoint M. Fromageot as Neutral Commissioner and asks if his Ministers concur; if there are any claims by or against Newfoundland His Majesty's Government are prepared to arrange for his Government to nominate a Commissioner to deal with them; other British claims will be dealt with by Canadian Commissioner; His Majesty's Government will pay half the cost of the Neutral Commissioner and all other expenses except those of counsel. | 91    |
| 80         | To the Governor-General and Governor. | Canada, Newfoundland, Telegram. | February 20    | Trusts that Ministers will be able to accept the schedule, which, it is understood, has been communicated to them telegraphically by Mr. Bryce.   | 91    |
| 81         | The Governor ...                      | Newfoundland, Telegram.         | (Rec. Feb. 21) | States, in reply to No. 80, that he has telegraphed to Mr. Bryce agreeing to the form of schedule suggested on the conditions specified.  | 91    |
| 82         | To Foreign Office ...                 | —                               | February 21    | Agrees to the inclusion in the first schedule of the claims against Newfoundland and Canada, and the inclusion of the Union Bridge and Studer claims; expresses inability to concur in the inclusion of other South African claims; agrees to inclusion of the United Brethren Mission claims, Sierra Leone.  | 92    |
| 83         | Ditto ... ..                          | —                               | February 21    | Forwards copy of No. 80; presumes that Mr. Bryce will be asked to telegraph to the Government of Newfoundland the terms of the submission; Mr. Harcourt is not disposed to raise objection to the terms of the submission pending receipt of the Colonial Governments' views.   | 93    |
| 84         | The Governor-General.                 | Canada, Telegram.               | (Rec. Feb. 22) | Embodies telegram to Mr. Bryce signifying agreement of Canadian Government to the schedule, but reserving for further consideration the terms of submission.  | 93    |
| 85         | Foreign Office ...                    | —                               | February 22    | Transmits copies of telegraphic correspondence with Mr. Bryce at Washington regarding the settlement of the schedule of claims.   | 93    |
| 86         | The Governor-General.                 | Canada, Telegram.               | (Rec. Feb. 22) | States that Ministers advise the selection of the Chief Justice of Canada to deal with Canadian claims at the Tribunal, and possibly with other British claims; they will be pleased with the selection of M. Fromageot as Neutral Arbitrator.  | 94    |



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| 87         | Treasury to Foreign Office.                | —                               | February 22                                      | Agrees to the submission to arbitration of the Brown, Union Bridge Company, and Webster claims, and reserves for the present the question of liability in the first and last cases.   | 95    |
| 88         | Mr. Bryce (Washington) to Sir Edward Grey. | (44)                            | February 14<br>(Rec. in Foreign Office Feb. 23.) | Reports progress of negotiations; encloses a draft schedule of claims.  | 95    |
| 89         | Foreign Office ...                         | —                               | February 23                                      | Concurs in the draft telegram enclosed in No. 82; states that the American Government have been informed that certain minor South African claims cannot be included, and proposes that consideration of liability in respect of the Studer claim be deferred until the award is given.  | 101   |
| 90         | To the Governor-General.                   | South Africa, Telegram.         | February 23                                      | States that the Government of the United States propose to include in the schedule claims in respect of Union Bridge Company and of Brown; that to the former the principles followed in cases of German claims will be applied, but that, in the case of the latter, liability, if any, should attach to His Majesty in respect of Transvaal; enquires whether Ministers will accept liability for any adverse award in this case. | 101   |
| 91         | Foreign Office ...                         | —                               | February 27                                      | Summarizes the conclusions reached at a discussion between the legal advisers of the Foreign and Colonial Offices with regard to the terms of submission attached to the Pecuniary Claims Agreement; concurs, and requests that the views be communicated to the Colonial Governments.  | 102   |
| 92         | Ditto ...                                  | —                               | February 28                                      | Concurs in the terms of the draft despatch enclosed in No. 70.  | 103   |
| 93         | To the Governor-General and Governor.      | Canada, Newfoundland, Telegram. | March 3  | States that His Majesty's Government consider, for the reasons given, that it is hardly desirable to accept the terms of reference; enquires whether the Governments of Canada and Newfoundland have any views on the matters mentioned.  | 103   |
| 94         | The Governor ...                           | Newfoundland, Telegram.         | (Rec. Mar. 4)                                    | Reports that Ministers offer no objection to the appointment of M. Fromageot and consider the other suggestions in No. 79 fair and reasonable.  | 103   |
| 95         | Foreign Office ...                         | —                               | March 4  | Forwards copies of telegraphic correspondence with Washington reporting that the United States Government has, at his request, deferred discussion of terms of submission; that there is now no chance of the Convention going before the Senate until the special Session, and that the United States Government now wish to re-open both the terms of discussion and the first schedule.  | 104   |

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| 96         | The Governor ...     | Newfoundland, Telegram.            | (Rec. Mar. 6)  | States that his Ministers do not clearly understand the bearing of No. 93 on Newfoundland claims and that the sections quoted refer to Imperial or Canadian matters.  | 104   |
| 97         | Foreign Office ...   | —                                  | March 6        | Suggests that the Government of Newfoundland should be informed that the Canadian Government have advised the selection of Sir C. Fitzpatrick as Commissioner to deal with the Canadian claims, and are agreeable to the appointment of M. Fromageot as Neutral Commissioner.   | 105   |
| 98         | To the Governor ...  | Newfoundland, Telegram.            | March 8        | States that Canada agrees to M. Fromageot as neutral arbitrator, and that it has been arranged that Sir Chas. Fitzpatrick shall be Commissioner for Canadian claims; explains that No. 93 referred to the draft terms of submission, which do not appear to affect any existing Newfoundland interests, and that it was sent in accordance with the practice of consulting Ministers when the interests of Newfoundland are in any way affected.                                    | 105   |
| 98A        | Ditto ...            | Straits Settlements, Confidential. | March 9        | States that His Majesty's Government have found it necessary to agree to the inclusion of the Studer claim in the schedule to the Pecuniary Claims Convention, and requests that the Sultan of Johore may be so informed.   | 105   |
| 99         | To Foreign Office... | —                                  | March 10       | Acknowledges the receipt of No. 92, and states that the despatch has been sent on the assumption that His Majesty's Government will accept liability for the Webster claim in the event of an unfavourable decision.  | 106   |
| 100        | To the Governor ...  | New Zealand, Confidential.         | March 10       | Conveys decision of His Majesty's Government to accept liability in the event of an adverse award in the Webster claim as a special case; presumes that his Government will co-operate.   | 106   |
| 101        | Foreign Office ...   | —                                  | March 14       | Forwards despatch to Mr. Bryce notifying the appointment of Mr. C. J. B. Hurst as British Agent.  | 107   |
| 102        | The Governor ...     | Newfoundland, Telegram.            | (Rec. Mar. 14) | Reports that his Ministers agree to the suggestion in No. 93.   | 107   |
| 103        | Foreign Office ...   | —                                  | March 15       | Transmits copy of further telegram from Mr. Bryce reporting that the United States Government desire to re-open the first schedule and to include certain claims; hopes the Canadian and Newfoundland Governments will be urged to agree to inclusion of the additional claims desired by United States Government; adds that the continued insistence of the United States Government upon the inclusion of South African claims is engaging the serious attention of Sir E. Grey. | 107   |



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| 104        | To the Governor-General. | Canada, Telegram.       | March 17       | Hopes his Ministers will agree to inclusion of the Atlin, Clark, and other additional claims desired by the United States Government.  | 108   |
| 105        | To the Governor ...      | Newfoundland, Telegram. | March 17       | Trusts that Ministers will see their way to accept the inclusion in the schedule of the six additional fishery claims desired by the United States Government.   | 108   |
| 106        | Foreign Office ...       | —                       | (Rec. Mar. 20) | Transmits copy of despatch to Mr. Bryce embodying substance of conversation with United States Chargé d'Affaires respecting South African war claims, and the reference of German war claims to arbitration.   | 109   |
| 107        | Ditto ...                | —                       | March 20       | Enquires whether the Canadian Government accept proposals of His Majesty's Government for the remuneration of Pecuniary Claims Commissioners, and whether Government of Newfoundland wish to appoint a Special Commissioner for hearing Newfoundland claims.               | 109   |
| 108        | The Governor-General.    | Canada, Telegram.       | (Rec. Mar. 22) | States that his Ministers agree to views in No. 93 re terms of submission under Convention.  | 110   |
| 109        | Foreign Office ...       | —                       | (Rec. Mar. 23) | Transmits draft of telegram to Mr. Bryce, informing him that Dietz, Peter, Reagan, Chamberlain, and Aronfreed claims must be excluded from the first schedule to the agreement.  | 110   |
| 110        | To Foreign Office ...    | —                       | March 23       | Concurs in terms of draft telegram to Mr. Bryce enclosed in No. 109.   | 110   |
| 111        | To the Governor-General. | Canada, Telegram.       | March 24       | Enquires whether proposals for the remuneration of members suggested in No. 78 are accepted.   | 111   |
| 112        | To Foreign Office...     | —                       | March 24       | States, in reply to No. 107, that the Dominion Government have been asked whether they accept proposals of His Majesty's Government regarding remuneration of the Commissioners, and that the Newfoundland Government wish to appoint a special Commissioner if necessary. | 111   |
| 113        | The Governor-General.    | Canada, Telegram.       | (Rec. Mar. 24) | States, in reply to No. 111, that minute of Council accepting proposals was sent on March 23.  | 111   |
| 114        | Foreign Office ...       | —                       | March 31       | Transmits copy of telegraphic correspondence with Mr. Bryce on the subject of the resumption of negotiations and the postponement of the South African claims.   | 111   |
| 115        | Ditto ...                | —                       | March 31       | Transmits copy of a despatch from Mr. Bryce summarizing what has passed since the date of No. 88 reporting the agreement reached with the State Department as to the first schedule.   | 112   |

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| 116        | Foreign Office ...                    | —                               | April 1                     | Transmits copy of a despatch from Mr. Bryce at Washington reporting further negotiations; considers that the information relating to the Sierra Leone claim of Daniel Johnson is as much as can reasonably be required from the United States Government, and trusts that the inclusion of the claim in the schedule to the agreement will now be agreed to. | 116   |
| 117        | Ditto ...                             | —                               | April 1                     | Transmits copy of a telegram to Mr. Bryce pointing out the objections to a classification of the claims in the schedule to the Convention.   | 127   |
| 118        | Ditto ...                             | —                               | April 1                     | Transmits copy of a telegram from Mr. Bryce stating that he hopes to indicate soon how far amendments suggested in terms of submission would meet needs of case, that if the United States Government are met as to terms of submission they may accept views as to dropping classification, and that the omission of four claims is an oversight.           | 127   |
| 119        | The Governor-General.                 | Canada, 150.                    | March 22<br>(Rec. April 3.) | Transmits copies of a minute of the Canadian Privy Council setting forth their views on the subject of the constitution and expenses of the Tribunal for the purposes of the Convention.   | 128   |
| 120        | Foreign Office ...                    | —                               | April 3                     | Transmits copy of a telegram to Mr. Bryce embodying the text of the amended terms of submission to which His Majesty's Government would agree, and requesting him to ascertain whether they would be accepted by the United States Government.   | 129   |
| 121        | To the Governor-General and Governor. | Canada, Newfoundland, Telegram. | April 3                     | Embodies text of amended terms of submission in connection with Convention and asks that the views of his Ministers may be communicated to Mr. Bryce at Washington and to the Colonial Office.   | 130   |
| 122        | Foreign Office ...                    | —                               | April 4                     | Transmits copy of a despatch from His Majesty's Ambassador at Washington respecting the "terms of submission" attached to the agreement with the United States Government; states grounds on which it has been decided to endeavour to secure a modification of the "terms" and details rather than to reject them altogether.                               | 130   |
| 123        | The Governor-General.                 | South Africa, Telegram.         | (Rec. April 4)              | States, in reply to No. 90, that Ministers cannot advise acceptance of liability for any adverse award in the event of Brown's claim going to arbitration.   | 131   |
| 124        | To Foreign Office ...                 | —                               | April 4                     | Agrees to the inclusion in the schedule of the Daniel Johnson claim.   | 131   |
| 125        | Foreign Office ...                    | —                               | April 4                     | Encloses telegram to Mr. Bryce stating that the objections of His Majesty's Government to the draft terms of submission are shared by the Governments of Canada and Newfoundland.  | 131   |



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| 125A       | The Governor ...      | Straits Settlements, Telegram. | (Rec. April 6)            | Presumes that, as the Sultan of Johore was not consulted as to inclusion of Studer claim, His Majesty's Government intend to assume entire responsibility for award, and asks if Sultan may be so informed, as any other arrangement would seriously prejudice relations with him.  | 135   |
| 126        | The Governor-General. | Canada, Telegram.              | (Rec. April 8)            | Embodies telegram to His Majesty's Ambassador at Washington, stating that the Canadian Government accept the amendment to the draft terms of submission contained in No. 121.   | 135   |
| 127        | To Foreign Office...  | —                              | April 8                   | Transmits copy of No. 119; proposes to inform the Governor-General that the contribution of His Majesty's Government towards the expenses of the Tribunal will be subject to the deduction of any amounts recovered from the claimants, and that if any self-governing Dominion other than Canada utilises the services of the Canadian judge it will be expected to pay his remuneration and expenses. | 136   |
| 128        | Foreign Office ...    | —                              | April 11                  | Transmits copy of a despatch from Mr. Bryce suggesting that with a view to retaining the Philippine claims in the first schedule a confidential assurance should be given to the United States Government that the South African claims should be arbitrated either under the present agreement or the general treaty, and of the reply informing him that no such assurance can be given.              | 136   |
| 128A       | To Foreign Office...  | —                              | April 12                  | Calls attention to the urgent necessity of explaining to the Sultan of Johore the reasons for submitting the Studer claim to arbitration, and suggests course of action.  | 137   |
| 129        | The Governor ...      | Newfoundland, Telegram.        | (Rec. April 17)           | Embodies copy of a telegram to Mr. Bryce, at Washington, covering one from his Ministers agreeing to the inclusion in the schedule of the additional claims and to the amended terms of submission contained in No. 121, excepting the paragraph dealing with interest, on the understanding that the assent of Ministers is not to be taken as an admission of the liability of the Colony.            | 138   |
| 130        | The Governor-General. | South Africa, Confidential, 4. | April 5 (Rec. April 24.)  | Transmits copy of a minute from Ministers stating their reasons for declining to accept responsibility in the matter of the Brown claim.  | 139   |
| 131        | Foreign Office ...    | —                              | April 24                  | Transmits copy of a letter to the Treasury urging that the liability for an adverse award in the Brown claim should be borne by His Majesty's Government.   | 141   |
| 132        | The Governor-General. | Canada, Confidential.          | April 14 (Rec. April 25.) | Transmits copy of the minute of the Canadian Privy Council concurring in the draft amended terms of submission.   | 142   |

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| 133        | Foreign Office ...       | —                           | April 25 | Acknowledges receipt of copy of No. 129; asks that, for the reasons stated, the Newfoundland Government may be urged to withdraw their objections to the paragraph in the terms of submission which relates to interest, and to inform both His Majesty's Government and Mr. Bryce direct of the results of their reconsideration.  | 142   |
| 134        | To the Acting Governor.  | Sierra Leone, Confidential. | April 25 | States that the United States Government have presented two claims for compensation arising out of the Sierra Leone Insurrection of 1898, and asks to be supplied with the fullest information available in respect of them.  | 143   |
| 135        | To Foreign Office...     | Confidential.               | April 25 | Transmits copy of No. 134; suggests that further information regarding the claims in question be obtained; expresses opinion that any expenditure arising out of the reference to arbitration should be borne by the Imperial Government.   | 144   |
| 136        | Foreign Office ...       | —                           | April 27 | Transmits copy of correspondence with Mr. Bryce on the objection of the Newfoundland Government to the interest clause in the terms of submission.  | 144   |
| 137        | To Foreign Office ...    | —                           | April 29 | Transmits copies of Nos. 132 and 130; enquires whether it will be safe to give an assurance to the Newfoundland Government that interest on the claims of the United States will only run from the date of Mr. Secretary Root's note of March 10, 1908, and whether the Tribunal would not, in the absence of a reference to interest in the terms of submission, have power to award interest at least in those cases in which it was claimed. | 145   |
| 137A       | Foreign Office ...       | —                           | April 29 | Forwards copy of letter to Treasury requesting sanction to assumption by the Imperial Government of liability in respect to the Studer claim in the event of an adverse award; observes that Sir E. Grey was under the impression that the Sultan had been consulted.   | 146   |
| 138        | Ditto ...                | —                           | April 29 | Asks if an answer has been received from the Canadian Government as to inclusion in the first schedule of certain additional United States claims.  | 147   |
| 139        | To the Governor-General. | Canada, Telegram.           | May 2    | Asks for reply to No. 101 as soon as possible.  | 147   |
| 140        | Foreign Office ...       | —                           | May 4    | Transmits copy of despatch from Mr. Bryce relative to the terms of submission; submits proposal for meeting the views of the United States Government.  | 147   |
| 141        | Ditto ...                | —                           | May 4    | Transmits copy of further correspondence with Mr. Bryce on the terms of submission, and the claims to be included in the first schedule.  | 151   |



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| 142        | Foreign Office ...      | —                              | May 4  | Acknowledges receipt of No. 135; expresses opinion that the United States Government have now furnished all information with regard to the claims of the United Brethren Mission and Daniel Johnson which can be expected, and suggests that His Majesty's Government should collect rebutting evidence; states that the incidence of the expenses of the Commission need not be considered until after the award. | 158   |
| 143        | Ditto ...               | —                              | May 5  | Transmits copy of a letter from Treasury agreeing to accept liability in the "Studer" case, and asking to see the minute of the South African Government in reference to the "Brown" case.   | 159   |
| 144        | Ditto ...               | —                              | May 5  | States, in reply to No. 137, that it is not considered safe to give the assurance to Newfoundland Government proposed, and asks that that Government may be urged to withdraw their objections to the Article relating to interest.  | 159   |
| 145        | Ditto ...               | —                              | May 6  | Transmits copy of a despatch from Mr. Bryce at Washington, enclosing copy of a despatch to the Governor-General of Canada, and of a memorandum by Mr. Young regarding the admission of certain claims to the schedule.   | 160   |
| 146        | Ditto ...               | —                              | May 6  | Concurs in the answer proposed in No. 127 to the Canadian Government regarding the expenses of the tribunal.   | 162   |
| 147        | Ditto ...               | —                              | May 9  | Transmits copy of a despatch from Mr. Bryce respecting amendment of an Article III of the terms of submission desired by the United States Government.   | 163   |
| 148        | To the Acting Governor. | Straits Settlements, Telegram. | May 10 | Requests that the Sultan of Johore may be informed that in the event of an adverse award His Majesty's Government will pay compensation awarded on the Studer claim and informed of reason for including the claim without referring to him.   | 164   |
| 149        | To the Governor ...     | Newfoundland, Telegram.        | May 10 | Trusts that, for the reasons given, Newfoundland will withdraw objection to Article III with regard to award of interest.  | 164   |
| 150        | To Foreign Office...    | —                              | May 10 | Concurs in views expressed in No. 140 re proposed terms of submission, but doubts utility of telegraphing to Canada and Newfoundland; suggests that Mr. Bryce should keep Governments of Canada and Newfoundland informed of changes, and that Sir W. Laurier and Sir E. Morris should be consulted in London if necessary.  | 165   |
| 151        | Foreign Office ...      | —                              | May 12 | Transmits copy of telegram to Mr. Bryce indicating amendments which His Majesty's Government are prepared to accept in the terms of submission.  | 165   |

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| 152        | Foreign Office ...       | —                       | May 12        | Transmits copy of despatch to Mr. Bryce at Washington authorising him to suggest to the United States Government the appointment of M. Fromageot as neutral arbitrator.  | 166   |
| 153        | Ditto ...                | —                       | May 12        | Transmits copy of a despatch from His Majesty's Ambassador at Washington reporting that the United States officials desire to retain the classification of claims, and of the reply instructing him to endeavour to obtain an assurance that the headings of such classification are not intended to limit the jurisdiction of the tribunal nor to confine the discussion.                                       | 167   |
| 154        | The Governor ...         | Newfoundland, Telegram. | (Rec. May 13) | States, in reply to No. 142, that Ministers agree to inclusion in award of interest not exceeding 4 per cent. per annum, and that Mr. Bryce has been so informed.  | 168   |
| 155        | To the Governor-General. | Canada, 356.            | May 16        | Requests that Ministers may be informed that the contribution of His Majesty's Government towards the expenses of the tribunal will be subject to the deduction of the amount recovered from claimants, and that if the services of the Canadian Judge are utilised by any other Dominion than Canada, that Dominion will be expected to pay his remuneration and expenses.                                      | 168   |
| 156        | Foreign Office ...       | —                       | May 19        | Suggests, with reference to No. 154, that an expression of the appreciation of their readiness to accept the views of His Majesty's Government be sent to Newfoundland Ministers.  | 168   |
| 157        | Ditto ...                | —                       | May 23        | Transmits copy of a despatch from Mr. Bryce at Washington stating the substance of interviews with Sir Wilfrid Laurier and Sir A. B. Aylesworth on the subject of the admission of the Atlin and other United States claims against Canada.  | 169   |
| 158        | Ditto ...                | —                       | May 24        | Transmits copy of telegram from Mr. Bryce at Washington reporting present stage of the negotiations; states proposals of Sir E. Grey as to the inclusion or exclusion of claims, and requests that the Canadian Government may be asked whether they will agree to the inclusion of one or both of the claims against them in return for the inclusion of one or both of their claims against the United States. | 170   |
| 159        | To the Governor-General. | Canada, Telegram.       | May 26        | Enquires whether the Canadian Government are prepared to admit either or both of the Atlin and Clarke claims in return for admission of either the hay claim or Cayuga Indians claim; asks for particulars of the three additional Canadian fishery claims.  | 172   |
| 160        | The Governor-General.    | Canada, Telegram.       | (Rec. May 28) | Reports that Ministers are anxious to obtain the views of His Majesty's Government on draft terms of submission.   | 172   |



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| 161        | Foreign Office ...       | —                           | May 29                    | Transmits paraphrase of a telegram from His Majesty's Ambassador at Washington reporting that the United States Government have formally communicated the terms of submission.   | 172   |
| 162        | To Foreign Office...     | —                           | May 29                    | Transmits copy of No. 159 and concurs in the draft letter to Mr. Bryce enclosed in No. 158.  | 173   |
| 163        | Ditto ...                | —                           | May 31                    | Transmits copy of No. 160 and draft reply.   | 173   |
| 164        | To the Governor ...      | Newfoundland, 122.          | May 31                    | Refers to No. 154, and asks him to express to Ministers the Secretary of State's appreciation of their readiness to accept the views of His Majesty's Government.  | 174   |
| 165        | Foreign Office ...       | —                           | June 3                    | Doubts whether Mr. Bryce has yet communicated to the Colonial Governments the views with regard to the terms of submission contained in the Foreign Office telegram of May 12; suggests, in reply to No. 163, that the Canadian Government should be informed that no agreement about the terms of submission has been concluded with the United States Government, but that a note on the subject is being awaited from them. | 174   |
| 166        | To the Governor-General. | Canada, Telegram.           | June 7                    | States, in reply to No. 160, that His Majesty's Government have not yet concluded any agreement as to the terms of submission, but are awaiting receipt of a note from the United States Government, and that a further communication will be made.  | 174   |
| 167        | The Governor-General.    | Canada, 321.                | May 31<br>(Rec. June 10.) | Transmits copy of the minute of the Privy Council asking that the views of His Majesty's Government on the draft terms of submission should be ascertained.  | 175   |
| 168        | Foreign Office ...       | —                           | June 10                   | Transmits copies of telegraphic correspondence with His Majesty's Ambassador at Washington respecting the schedule to the Pecuniary Claims Agreement, and asks that the Canadian Government may be urged to send as soon as possible an answer to Mr. Bryce's telegram as to the reservation of Clarke's claim.  | 175   |
| 169        | The Governor ...         | Sierra Leone, Confidential. | May 29<br>(Rec. June 12.) | States, in reply to No. 134, that no correspondence with regard to the two claims can be traced, and suggests reference to Sir F. Cardew and Major Fairtlough for information; refers to the decision in 1898 that no such claims could be recognised, and points out that if these two are now entertained others will be revived.  | 176   |
| 170        | To the Governor-General. | Canada, Telegram.           | June 13                   | States that the Secretary of State for Foreign Affairs hopes that an early reply will be sent to Mr. Bryce's telegram of June 6th to the Canadian Government.  | 177   |

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| 171        | The Governor-General. | Canada, Telegram.                     | (Rec. June 14)            | Embodies telegram sent to Washington stating that the Canadian Government desire insertion of Cayuga claim and are willing to agree to inclusion of Clarke claim.  | 177   |
| 172        | Foreign Office ...    | —                                     | June 15                   | Transmits copy of telegraphic correspondence with Mr. Bryce on the subject of the list of claims included in the schedule.   | 177   |
| 173        | Ditto ...             | —                                     | June 16                   | Transmits copy of a despatch from Mr. Bryce enclosing the formal communication by the United States Government of their draft terms of submission with their arguments in support, and of consequential telegraphic correspondence with Mr. Bryce.   | 178   |
| 174        | The Governor-General. | Canada, Telegram.                     | (Rec. June 19)            | Embodies telegram sent to Mr. Bryce at Washington informing him that Minister of Justice is quite content with Foreign Office amendments in terms of submission, and that there is no objection to exchange of notes.  | 181   |
| 175        | To Foreign Office...  | —                                     | June 20                   | Transmits copies of No. 169 and of related papers.   | 181   |
| 176        | Foreign Office ...    | —                                     | June 20                   | Transmits copies of telegraphic correspondence with Mr. Bryce in regard to first schedule and terms of submission; states that Mr. Bryce has telegraphed the terms of submission to Canada and Newfoundland; suggests that in case of delay in replying Sir E. Morris and Sir Wilfrid Laurier should be asked to approve them in London. | 182   |
| 177        | The Governor ...      | Newfoundland, Telegram, Confidential. | (Rec. June 20)            | States that Mr. Bryce's suggestion relative to terms of submission is accepted by his Ministers.   | 183   |
| 178        | The Acting Governor.  | Straits Settlements, Confidential.    | May 29<br>(Rec. June 26.) | Forwards correspondence with the Sultan of Johore with respect to the inclusion of the Stander claim in the Pecuniary Claims Convention.   | 183   |
| 179        | Foreign Office ...    | —                                     | June 29                   | Transmits copy of a telegram from Mr. Bryce stating that he had exchanged notes with the United States Government on 24th June, agreeing to the first schedule and the terms of submission.  | 184   |



## FURTHER CORRESPONDENCE

[January, 1910, to June, 1911]

RELATING TO THE

### PECUNIARY CLAIMS TREATY WITH THE UNITED STATES OF AMERICA.

2420

No. 1.

NEW ZEALAND.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 8.45 a.m., 24th January, 1910.)

TELEGRAM.

[Answered by Nos. 2 and 55.]

Your telegram, 11th December.\* Am desired by Prime Minister send reply as follows:—

Government of New Zealand will co-operate with Imperial authorities in any course of action they think proper in Imperial interests, but in so doing Government of New Zealand do not in any way admit any liability: question of liability can be settled should necessity arise on Constitutional grounds. Written statement by the New Zealand Attorney-General will be forwarded setting out position from his point of view.

PLUNKET.

2420

No. 2.

NEW ZEALAND.

THE SECRETARY OF STATE to THE GOVERNOR.

(Confidential.)

MY LORD,

Downing Street, 28 January, 1910.

I HAVE the honour to acknowledge the receipt of your telegram of the 24th instant,† regarding the Webster claim, from which I understand that, irrespective of the question of the ultimate liability, your Government have no objection to provision being made that, if the preliminary questions as to the effect of the Convention of 1853 and estoppel by the conduct of Webster are decided in favour of the United States, the whole claim should go to arbitration on its merits before the Pecuniary Claims Commission.

I have, &c.,  
CREWE.

\* No. 218 in Dominions No. 20.

† No. 1.



2420

No. 3.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by Nos. 4 and 58.]

SIR,

Downing Street, 28 January, 1910.

WITH reference to the letter from this Office of the 7th of January,\* I am directed by the Earl of Crewe to transmit to you, to be laid before Secretary Sir Edward Grey, the accompanying copy of a telegram† from the Governor of New Zealand on the subject of the Webster claim.

2. It will be seen that the Government of New Zealand maintain their view that the Dominion is not liable in the event of an award being given against His Majesty's Government in the proposed arbitration of this claim, but that they are willing to co-operate with the Imperial authorities in the matter, by which Lord Crewe understands the Dominion Government to mean that they see no objection to a provision that, if the preliminary questions as to the effect of the Convention of 1853 and estoppel by the conduct of Webster are decided in favour of the United States, the whole claim should go to arbitration on its merits before the Pecuniary Claims Commission.

3. His Lordship considers that it is not necessary at present to communicate further with the Government of New Zealand with regard to the question of liability. The matter can, if necessary, be discussed on the receipt of the views of the Dominion Attorney-General.

4. The Governor-General of Canada is being asked for a reply to the Secretary of State's confidential despatch of the 25th of November‡ (of which a copy was enclosed in the Colonial Office letter of the same date§) on the subject of the claim of the Cayuga Indians.

I am, &c.,  
C. P. LUCAS.

5172

No. 4.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 21 February, 1910.)

[Answered by No. 15.]

(Confidential.)

SIR,

Foreign Office, February 18th, 1910.

WITH reference to your letter, 2420, of the 28th ultimo,|| I am directed by Secretary Sir E. Grey to transmit to you herewith copy of a despatch from His Majesty's Ambassador at Washington respecting the progress of the negotiations for a Pecuniary Claims Convention with the United States Government.

You will observe that Mr. Bryce hopes soon to be authorized to agree to the arbitration of the Webster claim on the lines proposed by the United States Government.

The proposals to which Mr. Bryce refers appear to be those contained in his despatch, No. 232, of November 2nd last, of which a copy was sent to your Department on November 12th.¶

I am to enquire whether a reply has yet been received from the Dominion Government in regard to the Cayuga Indians' claim.

The Secretary of State would be glad to be informed as soon as possible whether Mr. Bryce may be instructed to inform the United States Government that the terms proposed are accepted by His Majesty's Government.

The Secretary of State for the Colonies will no doubt communicate with the Lords Commissioners of the Treasury if he considers that there is any appreciable risk of any liability falling on His Majesty's Government in connexion with the claim.

\* L.F. transmitting Nos. 217 and 218 in Dominions No. 20.

† No. 1.

‡ No. 216 in Dominions No. 20.

§ No. 275 in North American No. 216.

|| No. 3.

¶ No. 214 in Dominions No. 20.

I am to add that Mr. Bryce has been requested to send home a copy of the draft article for dealing with the Newfoundland claims, which did not accompany his despatch as stated.

I am, &c.,  
LOUIS MALLET.

Enclosure in No. 4.

(No. 29. Very confidential.)

SIR,

British Embassy, Washington, February 8, 1910.

I HOPED to have been able long before now to report that, pending the decision of His Majesty's Government in regard to the Webster claim, a substantial, though informal, agreement had been reached with the United States Government on other points of the Pecuniary Claims Convention. With this view, on receipt of your telegrams No. 170 of November 29 and No. 176 of December 6th authorising the submission to the United States Government of the amended Newfoundland claim, the State Department were pressed informally to admit the claim to the schedule under some such conditions as those outlined to you in the enclosure to my despatch, No. 232, of November 2nd. This proposal was subsequently supported by the memorandum copy of which is enclosed. After some further semi-official negotiation the State Department seemed to be prepared to embody the results already reached in a formal communication submitting a draft convention and schedule as agreed on with the former Administration for the consideration of His Majesty's Government. The addition of the Newfoundland and Webster claims to the schedule would then have been discussed, and as the legal advisers of the Department were, I know, not averse to including the former and were prepared to accept an arbitration of the Webster claim of the character submitted to you in my despatch, No. 232, of November 2nd, a final agreement on these two points did not seem very far removed.

It has, however, proved so far impossible to obtain this official communication in a form which would not be prejudicial to further progress. The apprehensions which I expressed a year ago that any negotiations which were not carried through then would fare worse under the incoming Administration has been unfortunately verified; not that the Secretary of State himself is unfriendly, but because the Department is badly organised and there is no driving force. Difficulties first arose in regard to the schedule, exceptions being taken on various specific grounds to most of our claims, more particularly to the Philippines Customs claims and Iloilo claims and the Rio Grande claim, all of them covering cases of some importance. As we had added several claims during the summer, we have some margin for concession, but so far, and pending your permission to do so, we have refused to consider the removal of any claims from the enclosed schedule. It would, however, seem probable that the Philippine Customs claims for very large amounts, involving also liability of the United States to other countries, being claims which were added during the summer, will have to be withdrawn and possibly the Rio Grande also. There appears to be a strong feeling among the officials recently added to the State Department that in regard to the schedules we have had much the best of the bargain; and as they recognise no binding force in agreements substantially arranged but not formally concluded with a previous Administration, the temptation to try and do better is proving too strong in certain quarters. The same feeling had led to the injection into the negotiations of a proposal to return to an open Convention without schedules, such as that of 1853. No opportunity has been lost of pointing out the undesirability of raising anew such a point at this stage and the fallacy of the abstract arguments on which it is based. The force of the representations made is admitted by some members of the Department, but on the matter of this Convention the Department seems at present to be divided. On the one side and in favour of coming to an agreement on the present basis are the two permanent legal advisers, who have hitherto been responsible for the negotiations; and on the other side are officials without their experience and whose talents have still to be proved, who have somehow, and so far prejudicially to the prospects of progress, obtained a voice in the matter. It is these latter who are acting as a disturbing element, and though I have reason to hope that the more practical and prudent policy of the lawyers will prevail eventually with Mr. Knox, I gather that any attempt to force matters now would have consequences less favourable to an agreement than the lawyers referred to hope to obtain later. The latter welcomed a suggestion that the Embassy should ask that the



approved claims in our schedule be submitted to Congress, both with a view to bringing our schedule more into proportion to theirs and in order not to miss any favourable opportunity of settlement. This has accordingly been done, and the Bill will be duly reported to you as soon as presented. As you will remember, a similar course was followed last winter, without prejudice to the negotiations.

Meanwhile the Embassy would be in a more favourable position to deal with any difficulties of the character above described, when we are, as it is hoped we may soon be, in a position to offer to agree in an arbitration of the Webster claim as proposed by the United States Government. We are still awaiting an expression of the view of the latter regarding the proposals emanating from Newfoundland which were conveyed to them some time ago.

I have, &c.,  
JAMES BRYCE.

The Right Honourable  
Sir Edward Grey, Bart.,  
&c., &c., &c.

#### MEMORANDUM.

Before consenting to the inclusion of the "fishery" claims of the United States in the Claims Convention, the Newfoundland Government (which has hitherto refused to admit these claims for submission to the proposed Commission) considers itself entitled to require a recognition of a right for them of raising, after the Hague Tribunal has delivered its award, and of arguing before this Commission the question as to whether such of the decisions contained in that award as may be in their favour do not indicate a pecuniary liability on the part of the United States to pay damages to Newfoundland in respect of injury to her fishermen due to operations of American fishermen that may be shown by the Hague award to be in excess of their treaty rights.

The reply to the questions whether any such liability can exist in principle, or, if it be held to exist, whether any specific damage can be shown, can only be satisfactorily obtained by such reference to the arbitration as is asked for. The reply on the part of the Newfoundland Government to the question whether the request for such reference is equitably justifiable may well be that the claim they may wish to make is in principle the same as the American "fishery" claims. As the United States desire to make a claim in respect of prejudice caused to American fishermen by Newfoundland interference which the award may show to be contrary to treaty rights, so Newfoundland desires to prefer her claim for prejudice caused to Newfoundland fishermen by such American action as the award may show to be contrary to treaty rights. Although the interference in the one case is directly administrative and in the other rather of an economic character, still the claim in both cases is similar, because it arises out of what was done, however innocently in both instances, beyond what the treaty allowed, and therefore it seems just that in both cases it should be allowed to be preferred. The people of Newfoundland would naturally complain if liability was enforced against them in respect of what they may have done beyond their rights and no liability was recognized as claimable against the United States in respect of what the latter may have done beyond their treaty rights.

The practical difference between the two claims is that whereas that of the United States is presented as specific and several claims of individuals or corporations, and consequently in a form suitable for inclusion in the schedules of the Convention as drafted, the Newfoundland claim cannot be now put into such a form, partly because until the award has been delivered there can be no certainty that it will arise and the expense to that community would consequently be unwarrantable, and partly because so much delay would be involved as would practically postpone a conclusion of this Convention until after the publication of the Hague award.

Were no other alternative possible, it would therefore be necessary to await the award of the Hague Tribunal before proceeding with this Claims Convention. This, it is very strongly felt, would be undesirable in the interests of the international relations of both countries. So important was it felt to be that the Hague award should be a final settlement of the fisheries controversies that when, in the course of the negotiations last winter as to the terms of reference, the possibility was pointed out that the award might be made a basis for pecuniary claims, a provision in the agreement to arbitrate would have been proposed to meet this possibility but for pressure of circumstances and the probability that some provision might be made for it in this Claims Convention. The possibility has now become a certainty and, except

in the event of the award deciding entirely in favour of the United States, it will, it is apprehended, merely close the controversy as to the "reasonability" of regulations to open another as to pecuniary liability. Should the award cause any irritation to the losers, this would be greatly aggravated by the presentation of pecuniary claims based on it; and the second phase of the controversy might be acuter and more acrimonious than the first. Nor would, then, any solution by way of arbitration be obviously open, but would have to be negotiated afresh, for this Claims Convention would neither suffice to meet such a situation nor would be likely to survive it.

It would no doubt eventually be referred to some form of arbitration, and the amount claimed might then run to millions instead of thousands and involve as heavy an assessment of compensation as in the Halifax award.

But the question of pecuniary liability under the award being still in a hypothetical and embryonic condition, it is possible to provide for it in the Claims Convention in a way which will still keep it within narrow limits and avert future friction. The Newfoundland Government have consented to a limitation of the liability claimed by them to \$200,000 in view of the total amount of the American scheduled claims, and of the fact that the United States Government do not intend to add materially to this schedule. This restriction can therefore be made reciprocal and the question reduced to relative unimportance. It then only remains to permit Newfoundland, if so advised, to raise and argue its claim, so far as supported by the Hague award, without extending the present scope of the Convention.

When the Commission approaches consideration of the American scheduled claims, general questions as to whether there is pecuniary liability under the award will have first to be settled before examining specifically and severally such scheduled claims as survive this enquiry. An Arbitration Commission in considering such general questions of liability might well feel itself unable to exclude arguments by Newfoundland alleging damages caused by American fishermen acting in excess of their rights, and might even take such counter-claim into consideration in assessing damages allowed to American fishermen for interference when acting within their rights. If it held all this to be outside its functions, there would remain outstanding an issue between Newfoundland and the United States likely to produce further friction and vexation. It seems therefore, in the interests of that good feeling which this Convention is designed to secure, far better, both as a political measure for the reasons above noted and as a provision for the procedure of the Commission itself, that this should be now provided for by the Convention in anticipation than that such a claim will be raised and a controversy arise over it before the Commission.

This is the object of paragraph *a* of the annexed article. It does no more than formally extend to Newfoundland the power to obtain a ruling of the Commission on the counter-claim, which at present it could only raise indirectly and without obtaining a definite decision.

If the ruling of the Commission be unfavourable to the claim, it will be final; if favourable, then should both parties wish to proceed further to a final settlement, paragraph *b* provides power to the Commission to examine the evidence of damage and assess its amount, if any. This, however, would be done only at the request of both Powers.

Paragraph *c* is only a regulation of procedure, and does not concern this point.

To sum up:—

This provision will permit the passage of this Convention, which, if suspended until after the Hague award, runs great risk of being lost; and which, if passed, will clean the slate for the first time since 1854.

It will prevent the possibility of serious future trouble over any pecuniary claims that may arise out of or be presented on the basis of the award. In fact it is a necessary completion and winding up of the whole fisheries question.

The United States Government will observe that any claim that might be presented under it would be (1) contingent upon a decision of the Hague Court, (2) dependent on the ruling of the Commission, (3) dependent on proof of damage, (4) that the maximum liability is in any case a small sum, and (5) that the liability will not go before this Commission for determination unless both parties so agree.

British Embassy, Washington.

December 23, 1909.



## BRITISH SCHEDULE.

1. Claims for compensation for illegal imprisonment in Hawaii in 1895-1896.
2. Claims for damages caused by military operations in the Philippines during the insurrection, 1898-1899.
3. Claim for pecuniary loss caused by administrative interference with the construction of a dam on the Rio Grande.
4. Claims for damages to cables of the Cuban Submarine Telegraph Company and of the Eastern Extension, &c., Company, caused by naval operations in 1898.
5. Claim of Mr. Hardman for damages caused by military operations of United States forces in Cuba.
6. Claim of Mr. Wrathall for damages caused by military manoeuvres at Chickamauga in 1898.
7. Claims of owners of s.s. "Lindisfarne," "Eastry," "Newchang," and "Sidra" for damages or demurrage caused by naval vessels of the United States.
8. Claim of Messrs. Walker for freight for coal carried to Manila for the United States Government in s.s. "King Robert."
9. Claims for refund of Customs duties on imports into the Philippines in 1898.
10. Claims of Canadian Electric Light Company and of Great North-Western Telegraph Company for damages to their cables in the St. Lawrence by the United States ship "Essex."
11. Claims for refund of express duties on hay imported from Canada from 1866 to 1881.
12. Claim to payment for lumber supplied to the United States authorities in the Yukon.
13. Claim of owners of "Lord Nelson" for damages caused by seizure in 1812.
14. Claim for compensation of relatives of Miss Cadenhead, shot by a sentry at Fort Brady in 1907.
15. Claim for damages to s.s. "Canadian," of the Dominion Government, caused by collision with United States ship "Yantic" in the St. Lawrence in 1897.
16. Claim of owners of s.s. "Coquitlan" for seizure in 1892.
17. Claims of owners of Canadian schooners "Favourite," "Wanderer," and "Kate" for losses caused by seizure in 1894-1896.
18. Claims of Cayuga Indians for annuities due since 1795 for lands ceded in the State of New York.

6666

No. 5.

SIR EDWARD GREY to MR. BRYCE (WASHINGTON).

[See No. 11.]

(No. 69.)

SIR, Foreign Office, February 18, 1910.

I TRANSMIT to Your Excellency herewith copy of a letter\* which I have addressed to the Secretary of State for the Colonies on receipt of your despatch, No. 29, of the 8th instant,† respecting the Pecuniary Claims Convention, and I hope to be able to furnish you with instructions respecting the Webster and Cayuga claims very shortly.

As regards the schedule of the British claims attached to your despatch, I will consider whether any of the claims can be omitted on learning definitely from you to which the United States Government object.

In the meantime, I should be glad to learn whether the claim of Messrs. Reichardt and Company may be regarded as included in the schedule (see my despatch, No. 107, of the 23rd April last), and what claims are included in your list under the heading Philippine claims (see my despatch, No. 322, of the 8th December last).

Claim No. 15 on your list is presumably that of the steamship "La Canadienne."

If so, it would be desirable to retain that name to avoid possible confusion in future.

\* No. 4.

† Enclosure in No. 4.

In conclusion, I request that you will furnish me with a copy of the draft article for dealing with the Newfoundland claims, which did not accompany the memorandum enclosed in your despatch as stated.

I am, &c.,  
E. GREY.

5172

No. 6.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Sent 11.30 a.m., 25 February, 1910.)

TELEGRAM.

[Answered by No. 13.]

Confidential. I should be grateful if you will endeavour to secure as soon as possible an expression of the views of your Government on the arbitration of the claim of the Cayuga Indians, dealt with in my confidential despatch of 25 November.\*  
—CREWE.

6168

No. 7.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 1 March, 1910.)

[Copy of Enclosure to Governor-General, 9 March, 1910. No. 172. L.F.]

The Under Secretary of State for Foreign Affairs presents his compliments to the Under Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—Mr. Bryce, No. 36, February 14th, 1910: (Pecuniary Claims Convention.)

Foreign Office,  
February 28th, 1910.

Enclosure in No. 7.

(No. 36.)

SIR, British Embassy, Washington, February 14th, 1910.

With reference to my despatch, No. 29, very confidential, of the 8th instant, I have the honour to transmit herewith copy of a Note which I addressed to the Secretary of State requesting that the approved claims in our schedule to the provisional Pecuniary Claims Convention should be submitted to Congress.

I have, &c.,  
JAMES BRYCE.

The Right Honourable  
Sir Edward Grey, Bart, M.P.,  
&c., &c., &c.

(No. 30.)

SIR, British Embassy, Washington, February 14th, 1910.

As you are aware, a Convention for the arbitration of such pecuniary claims now outstanding between my Government and that of the United States as both Governments may consider suitable for settlement by that means has been for some considerable time the subject of informal negotiations between the State Department and this Embassy, which will, it is hoped, shortly result in an agreement for the creation of an Arbitral Commission to deal with them.

Among the claims provisionally included in the schedule presented by His Majesty's Government are a certain number in which liability has been accepted by the United States Administration and in regard to which recommendations have

\* No. 216 in Dominions No. 20.



at one time or another been submitted to Congress by the State Department supporting appropriations for their settlement in full. This action was taken as recently as last winter when all these approved claims were at various times recommended to Congress, with the result that they were paid and removed from the schedule. This was done at the request of this Embassy and without prejudice to the provisional retention of these claims in the British Schedule to the Convention, the negotiations as to which were then already in an advanced stage.

I desire to suggest for your consideration that it would be now desirable that this procedure should again be followed in regard to the approved claims, of which a list is appended. As liability is admitted in regard to them, their reference to arbitration is really nothing more than a formality resorted to in order to avoid difficulties in obtaining appropriations in regard to them which may very possibly have ceased to exist, and a settlement of them by the procedure suggested would be very welcome to my Government, while it would have the effect of clearing the schedule to the proposed Convention of what are admitted claims not needing arbitration.

To the list of approved claims herewith annexed have been appended two: those known as the "Yukon lumber" and "Wrathall" claims. The amounts in these two claims being insignificant and the facts apparently undisputed, you may be disposed to think, after considering them, that the United States Government might properly include them in the approved claims for submission to Congress.

I have, &c.,

JAMES BRYCE.

The Honourable  
Philander C. Knox,  
Secretary of State,  
&c., &c., &c.

#### APPROVED CLAIMS FOR RECOMMENDATION TO CONGRESS.

Claims for damages to cables of the Cuban Submarine Telegraph Company and of the Eastern Extension, &c., Company, caused by naval operations in 1898.

Claims of Canadian Electric Light Company and of Great North-Western Telegraph Company for damages to their cables in the St. Lawrence by the United States ship "Essex."

Claims of owners of s.s. "Lindisfarne" and "Eastry" for damages or demurrage caused by naval vessels of the United States.

Claim of Messrs. Walker for freight for coal carried to Manila for the United States Government in the s.s. "King Robert."

#### CLAIMS RECOMMENDED FOR APPROVAL.

Claim of Mr. Wrathall for damages caused by military manoeuvres at Chickamauga in 1898.

Claim to payment for lumber supplied to the United States authorities in the Yukon.

8272

No. 8.

CANADA.

THE GOVERNOR-GENERAL TO THE SECRETARY OF STATE.

(Received 19 March, 1910.)

[Answered by No. 16.]

(Confidential.)

MY LORD, Government House, Ottawa, Canada, 7th March, 1910.

WITH reference to your Lordship's confidential despatches of the 28th October and the 29th November,\* relative to the desire of the Newfoundland Government that in the event of the decision of The Hague Tribunal in the North Atlantic Coast Fisheries Arbitration being favourable, a claim for compensation and damages

\* No. 259 and 278 in North American No. 216.

should be preferred against the United States Government, in respect of the exercise by United States fishermen of privileges in excess of those to which they were entitled under the Treaty of 1818, and enquiring whether the Canadian Government desired that a similar claim should be made on behalf of the Dominion, I have the honour to transmit, herewith, for your Lordship's information, copy of an approved minute of His Majesty's Privy Council for Canada stating that my responsible advisers consider that while the presentation and support of such a claim may present certain difficulties, in view of its necessarily vague and indeterminate character, there does not appear to be any reason why a demand made by His Majesty's Government on behalf of Newfoundland might not be so formulated as to include the Dominion of Canada.

I have, &c.,

GREY.

Enclosure in No. 8.

CERTIFIED copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 4th March, 1910.

(P.C. 2625.)

The Committee of the Privy Council have had before them a Report from the Secretary of State for External Affairs submitting that he has had under consideration two confidential despatches and enclosures, dated respectively the 28th October and 29th November, 1909, from the Right Honourable the Secretary of State for the Colonies, relative to the desire of the Newfoundland Government that, in the event of the decision of The Hague Tribunal on the North Atlantic Coast Fisheries Arbitration being favourable, a claim for compensation and damages should be made against the United States Government, based on the ground that the inhabitants of Newfoundland have suffered loss owing to competition with inhabitants of the United States in the exercise of privileges enjoyed by them in excess of the liberties conferred by the Treaty of 1818, and enquiring whether the Canadian Government desire that a similar claim should be made on behalf of the Dominion.

The Minister states that while he fears, by reason of its necessarily vague and indeterminate character, the presentation and support of such a claim would not be free from difficulties, he sees no sufficient reason why, if His Majesty's Government should decide to prefer a demand upon the United States on behalf of Newfoundland for such compensation and damages, such claim might not be so formulated as to include the Dominion of Canada. The Minister is the more disposed to this view from a consideration of the possibility suggested by Mr. Bryce in the latter's despatch of the 28th June, 1909, namely, that the award may determine some of the doubtful questions in favour of the British contentions, and others in favour of the United States, in which contingency claims of this nature on the one side might be used as a set off against claims of a like nature on the other.

The Committee, on the recommendation of the Secretary of State for External Affairs, advise that Your Excellency may be pleased to inform the Right Honourable the Secretary of State for the Colonies in this sense.

All which is respectfully submitted for Your Excellency's approval.

RODOLPHE BOUDREAU,

Clerk of the Privy Council.

8272

No. 9.

COLONIAL OFFICE to FOREIGN OFFICE.

[Copy to Governor-General, Canada, 2 April, 1910. Confidential. L.F.]

[Answered by No. 14.]

SIR,

Downing Street, 1 April, 1910.

WITH reference to the letter from this Office of the 29th of November last,\* I am directed by the Earl of Crewe to transmit to you, to be laid before Secretary Sir E. Grey, copy of a despatch† from the Governor-General of Canada on the subject of Pecuniary Claims against the United States of America.

\* No. 279 in North American No. 216.

† No. 8.



2. It will be seen that the Dominion Government consider that a claim should be preferred on behalf of Canada in respect of fishery privileges enjoyed by United States fishermen in excess of those conferred on them by the Treaty of 1818, similar to that which it is proposed to prefer on behalf of Newfoundland.

3. Lord Crewe fears that the United States Government will not be ready to consider favourably the insertion of this claim, which is extremely vague, but he would be glad if Sir E. Grey would bring the views of the Dominion Government to the notice of His Majesty's Ambassador at Washington.

I am, &c.,  
C. P. LUCAS.

9811

No. 10.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 4 April, 1910.)

[Answered by L.F. transmitting copy of No. 12.]

(Confidential.)

SIR,

Foreign Office, April 2nd, 1910.

WITH reference to the letter from this Department of the 18th February last,\* I am directed by Secretary Sir E. Grey to transmit to you herewith copy of a further despatch from His Majesty's Ambassador at Washington respecting the progress of the negotiations for a Pecuniary Claims Convention with the United States Government.

It appears that the United States Government, after having suggested the conclusion of a Convention providing generally for the "open" arbitration of all outstanding claims, have now offered to resume negotiations on the old basis of the arbitration being limited to the claims enumerated in schedules attached to the Convention.

I am to point out in this connection that it would facilitate Mr. Bryce's discussions with the United States Government as regards the composition of the schedules if he could be informed at an early date whether the Canadian Government are prepared to agree to the proposed arbitration of the preliminary questions in the Cayuga Indians' claim. I am accordingly to suggest that the Dominion Government should be pressed to furnish the Earl of Crewe with their views on this question with the least possible delay.

I am, &c.,  
W. LANGLEY.

Enclosure in No. 10.

(Confidential. No. 60.)

SIR,

British Embassy, Washington, March 22, 1910.

IN my despatch, No. 29, of the 8th of February, I reported that the State Department showed a disposition to revise the lines on which recent informal negotiations for the Pecuniary Claims Convention had been proceeding, and that this disposition was met by an indication on the part of the Embassy of the difficulties incident to such a change from the lines on which, largely at the instance of Mr. Root, the discussion had gone forward. Soon after writing the above the matter was taken out of the hands of Dr. Scott and entrusted to Mr. Hoyt and to Mr. Chandler Anderson—a change of which the Embassy have no reason to complain except in so far as it made it more difficult to prevent a general reconsideration of the matter.

This reconsideration had, as previously reported, taken the form of pressure on us to assent to an "open" arbitration instead of one restricted to schedules previously agreed upon. This had been met with the statement of objections mainly on the ground of the difficulty of obtaining Colonial assent to it; though, as will be seen in the memorandum prepared by Mr. Young unofficially, copies of which are annexed, and which was privately communicated to Mr. Hoyt and Mr. Anderson, the other arguments in favour of an open Convention were to some extent traversed.

\* No. 4.

Recently I was invited to the State Department to meet Mr. Hoyt and Mr. Anderson, to whom the matter seems to have been left by Mr. Knox. They were accompanied by two of the Department's legal advisers and Mr. Young accompanied me. The result of the discussion may be summarized as follows.

They were prepared to accept the Convention as agreed on by us and approved by Canada, with the provision for Colonial arbitrators and Dr. Lammasch as third arbitrator. They proposed, however, that instead of the arbitration being restricted to schedules of claims agreed on by both parties it should be made open to all claims presented by either party; and in order to meet our difficulty as to Colonial claims they were prepared to accept a clause reserving all claims affecting self-governing Colonies until their concurrence had been obtained, provided the Fisheries and Webster claims were not affected. On their part they merely wished for some general formula excluding old State bond and land-grant claims.

This new basis did not seem to preclude the possibility of an early settlement satisfactory to us, but although the proposal was as formal as a verbal proposal can be, I thought it better to postpone any expression of opinion as to its prospects of success with His Majesty's Government until I could privately assure myself that it had a reasonable prospect of success in the Senate. The enquiries instituted by the Embassy showed that, as seemed on the face of it likely, such an arrangement might probably prove unacceptable to the Senate; and this was to-day confirmed by the State Department withdrawing their proposal and offering to resume negotiations on the old basis.

This will now be done without further delay; and as there seems to be a real wish on the part of the Department to bring the matter to a conclusion, progress will probably be made. It is something gained that the negotiations should now be in the experienced hands of Mr. Chandler Anderson, who is not likely to waste more time in such a *cul-de-sac* as that of the proposal for an "open" arbitration, which has caused a delay of some weeks.

I have, &c.,  
JAMES BRYCE.

The Right Honourable

Sir Edward Grey, Bart., M.P.,  
&c., &c., &c.

## MEMORANDUM.

## PECUNIARY CLAIMS CONVENTION.

*An "Open" and a "Schedule" Arbitration compared.*

THE question as to the possibility of an "open" arbitration of pecuniary claims instead of one with closed schedules was raised in the course of the first discussions with Mr. Root as to the lines on which a Convention might be concluded. It was then developed that there were certain claims on either side which the respective parties were unwilling to arbitrate, and Mr. Root, after considering the matter under this and other aspects, came to the conclusion that no satisfactory general formula could be found which would exclude those claims on either side, and that for this and other reasons connected with the ratification of the Convention, it would be necessary that all claims to be submitted to the Commission be enumerated in schedules annexed to the Convention, and that the jurisdiction of the Commission be limited to these schedules.

The negotiations have now proceeded for over two years on this basis, being greatly protracted by the difficulties experienced by either party in obtaining the consent to inclusion in the schedules of claims concerning the interests of States of the Union or self-governing Colonies. This negotiation, which has been one of great difficulty, is now, it would seem, on the point of settlement.

A proposal to reconsider the whole basis of the negotiation at this late stage by re-opening the question of an open arbitration could not but be very unwelcome to His Majesty's Government, which has spared no effort to bring about an agreement on the basis adopted during the last three years—one of which has been passed in negotiations with the present Administration. It would, indeed, probably be difficult to convince them that this was not an expedient for terminating the negotiation; not only because the proposal itself is untimely, but because what is proposed would seem to be unattainable.

There are, of course, arguments in favour of an "open" arbitration. One is that a "scheduled" arbitration, as at present contemplated, discriminates unfairly



in favour of claims included in the schedule, such inclusion being based not on the merits of the claim but on its acceptability to the other party.

This is an argument based on the view that as all men are equal in the sight of municipal law, all nations should be equal in international law; and that for all relations between them there should be an internationally legal remedy. But Sovereign States are, as a matter of fact, no more equal before international law or generally subjected to it, than were individuals, say, under the feudal system. So far they have accepted a voluntary international jurisdiction for some phases only of their multifarious mutual relations. The theory may be accepted that all Sovereign States are equal; but a Sovereign State is itself a term of art, and the various local governments in the world of sufficient importance to be called States exhibit in their external relations every phase and form of sovereignty. Moreover, units which are unquestionably sovereign as a whole combine within themselves components with more or less claims to sovereignty. In proportion as this claim of the component State to sovereignty is well founded on facts, so do the relations between the central government of the composite State and the local government of the component State become in practice, whatever they may be in principle, diplomatic in character, and the ultimate appeal to coercion by the Central Government becomes more and more remote and more irrevocable. This claim to sovereignty of the local government will be especially strong in democratic communities, for where the social contract attributes sovereignty to an individual, or even a body, its subordination to another individual or body can be regulated and enforced, but where sovereignty is attributed to a people it cannot.

The two parties to the present Convention are interesting cases in point. The United States are a Sovereign State in which the Federal Government, with the support of the majority of the people, extinguished coercively the latent sovereignty of the States; but even in this case, where the usual factors of sovereignty were defective, and that was, broadly speaking, a community of race, religion, territory, and interests, the coercion involved one of the most desperate wars of modern times. In the case of the United Kingdom, the appeal to force—taken in a case in which there was no community of territory or economic interests—resulted in the War of Independence, and a verdict of a contrary character to that of the Civil War.

The consequence is, that in such matters as pecuniary claims outstanding between composite States, such as the United States and the United Kingdom, and involving liability either moral or material from the component communities, the United States and the United Kingdom are not on a similar footing. The self-governing Colonies have a measure of practical independence and international importance which compares well with that of a Sovereign State such as, say, Serbia; the States of the Union are local legislative units with a more than adequate representation in the treaty-making authority. The practical result is that in matters concerning either Colonies or States as a whole, the governments of the former must be considered before any Convention concerning their interests is concluded; whereas in the case of the latter their representatives are by courtesy considered before it can be ratified. The greater difficulty, diplomatically speaking, of the former procedure is obvious. The necessary consent to an open convention might conceivably be obtained by the United States Government by a few minutes' conversation with Senators with whom they are in daily touch. It would impose on His Majesty's Government a formal correspondence with the Governments of practically independent communities in all the four quarters of the globe.

Before a really "open" arbitration can be secured, *i.e.*, before present and future claims between Governments can be submitted on their merits and under obligations to an international judicature, it is probable that the treaty-making authority both of the United States and of the United Kingdom must undergo further development. It is true that an "open" arbitration covering present claims, originating during a certain period, might possibly be negotiated now on either side, as it was in 1853, though the difficulties are much greater now than then. But even then there would be discrimination against good claims not coming within the period; and there are now outstanding claims so discriminated against by the 1853 Convention. Moreover, a time restriction will not be enough, for there are on both sides claims involving States and Colonies which must be excluded. Therefore, instead of the schedules of claims for arbitration already almost agreed upon, a fresh negotiation would have to be started as to a schedule of claims not to be arbitrated. But whereas the omission of a meritorious claim from the schedule

of inclusion in no way prejudices it, its mention in the schedule of exclusion cannot but be prejudicial to it. In fact, the result of this new negotiation would not be an "open" negotiation but an arbitration limited in two ways instead of in one. Moreover, with the present arrangement there is nothing to prevent the addition of fresh schedules by agreement duly ratified by the Senate, and after reference, where requisite, to the Colonies. It is to be expected that by negotiations proceeding concurrently with the arbitration of claims already scheduled, finally all claims on either side will have been scheduled for arbitration except those which in any case would have had to be put in the schedule of exclusion. Further, the advantage of an arbitration by such successive schedules over one by one "open" general agreement to arbitrate is that under the former each of the contracting parties need only consider each claim after presentation by the other. Before contemplating an "open" arbitration, each party would have to make an exhaustive examination of all possible claims that might be presented against it, not merely to ascertain the extent of liability, but to ascertain its effect on States' rights or Colonial relations. Such an examination and the consequent references to local Governments would postpone an agreement almost indefinitely, besides being largely a waste of time and trouble.

Another argument in favour of an "open" arbitration is that it will allow of a "barring" clause by which claims which have not been submitted for presentation to the arbitration, or which have been submitted and which the responsible Government has refused to present, may be for ever barred by an international act. Such a barring clause is found in the 1853 Convention, where it has operated with hardship in some cases. But an "open" arbitration is not indispensable in order to have a barring clause. It will be just as easily negotiated, as effective and less eccentric in its operation if appended to an arbitration by schedules. For after all claims scheduled have been arbitrated, and those as to which arbitration cannot be admitted have been ascertained, and the proper advertisement has been issued, there is nothing to prevent the negotiation of a supplementary Convention barring the future presentation of claims not hitherto presented and not specified as held over without prejudice.

Another argument adduced in favour of an "open" arbitration is that it prevents invidious comparisons between the schedules of either party, based on the relative numbers, values, or merits of the claims in them. This is, of course, an argument based on the diplomatic rather than on the judicial theory of arbitration, but has none the less a practical importance. It would seem to be weak, however, if the two first schedules annexed to the Convention itself are approximately balanced. Thereafter supplementary schedules would attract little attention, and as the schedule of British claims against the United States only need be submitted for ratification to the Senate, there would be no obvious comparison to be drawn. As a matter of fact, if the "approved" claims in the British schedule were settled by Congressional appropriation, the schedules, as now arranged, are not badly balanced. These "approved" claims are in themselves an answer to any criticism calling attention to a preponderance in the British schedule. There must be a corresponding preponderance of British over American claims in these claims on either side dating from 1853 never presented or presented and dropped, and this preponderance an "open" arbitration is obviously more exposed to than a "scheduled" arbitration.

Finally, the history of international arbitration would seem to indicate that in this region of international claims setbacks to the cause of arbitration have been almost invariably due to attempting a form of arbitration unsuitable to contemporary conditions and the practical circumstances of the case. Arbitration must, in its essence, be voluntary, and to overload it with obligation is as prejudicial to its development as perverting it into litigation. An "open" arbitration is either an international Court of Claims, which is not yet practical, or it is a "limited" arbitration. As the latter, it has no advantages over the form of arbitration limited by schedule which has been under negotiation for several years, and as to which an agreement would seem to be in sight.

British Embassy,  
Washington,  
February 16, 1910.



No. 11.

## FOREIGN OFFICE to COLONIAL OFFICE.

(Received 5 April, 1910.)

The Under Secretary of State for Foreign Affairs presents his compliments to the Under Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—Mr. Bryce, No. 55, March 14, 1910: (Pecuniary Claims Convention with United States of America).

Reference to previous letter: Foreign Office, February 28, 1910.\*

Foreign Office,  
April 4, 1910.

Enclosure in No. 11.

(No. 55.)

Sm, British Embassy, Washington, March 14, 1910.

In my despatch, No. 36, of February 19th, I had the honour to transmit copy of a note to the United States Government asking that the "approved" pecuniary claims against the United States Government should, as heretofore, be recommended to Congress without prejudice to the concurrent negotiations for their arbitration. I have now the honour to transmit copy of a reply which I have received. It will be observed that the United States Government agrees to do so; but declines to include among these "approved" claims the claims of Mr. Wrathall and that for lumber cut in the Yukon, both of which the Embassy had recommended for approval. The progress of the Bill embodying these claims will be reported.

In regard to the claim of Messrs. Reichardt, referred to in your despatch No. 69, of the 18th ultimo, there is herewith enclosed a communication received from that firm in reply to the request from the Embassy for information as to their nationality. The passport states that Mr. Joseph Paul Reichardt is a naturalised British subject (1896) of Austrian origin, and is dated Foreign Office, 12 August, 1904. It will be observed that Messrs. Reichardt do not wish for any action in their case at present.

That the claim of Messrs. Ker Bolton and Company, referred to in your despatch above-mentioned, should be included as one of the Philippine (Iloilo) claims has been noted, as has the point as to "La Canadienne."

Further copies of the draft Newfoundland article are included for record, but in view of fresh developments which I hope to be in a position to report by an early mail the proposal concerning this article may lose its practical importance.

I have, &c.,  
JAMES BRYCE.

The Right Honourable  
Sir Edward Grey, Bart., M.P.,  
&c., &c., &c.

EXCELLENCY, Department of State, Washington, March 3, 1910.

I HAVE the honour to acknowledge the receipt of your note of the 10th ultimo relative to certain claims of British subjects against the Government of the United States, and in reply to state that the Department has been glad to renew its recommendation previously made to Congress that provision be made for the settlement of the claims of the Canadian Electric Light Company, the Cuban Submarine Telegraph Company, the Eastern Extension, Australasia and China Telegraph Company, the "Eastry," the Great North-Western Telegraph Company of Canada, and the Lindisfarne.

It appears that the claim on account of the "King Robert" arises under the Navy Department, and was submitted to the last Congress by that Department in a separate Bill. The Department of State is, therefore, writing the Navy Department requesting it to recommend again the claim for payment by Congress.

It is regretted that the Department is unable, without further consideration, to recommend the claim of Mr. Wrathall to Congress for payment.

With regard to the payment of the claim for lumber, the Department begs to advise that the examination of all the papers in the case fails to disclose liability on the part of the United States, and the Department is, therefore, unable to submit the claim to Congress.

I have, &c.,  
For Mr. Knox,  
HUNTINGDON WILSON.

His Excellency the  
Right Honourable James Bryce, O.M.,  
Ambassador of Great Britain.

Reichardt Asiatic Trading Company, 42, Broadway, New York,

Sm,

March 9th, 1910.

I BEG to acknowledge your favour of the 7th instant, and have pleasure in submitting my passports, which I presume is the necessary evidence. I may mention that our firm, consisting of writer and his brother, Alexander Reichardt, were established in Hull, England, for about eighteen years. My brother is a son-in-law of Mr. Edward Dixon, Chairman of Blundell, Spence, and Company, in Hull, the oldest and largest varnish and colour manufacturers in England. Mr. Dixon's brother-in-law, Dr. Longstaff, of London, contributed about £30,000 for the first antarctic expedition. My own family consists of three daughters and a son, all born in England. Four years ago our business was transferred from Hull, England, to New York City, and in May, 1908, same was incorporated in the State of Maine as above as a purely private family corporation. If there is any further information you require on this subject I will be happy to send same.

Since I last wrote Your Excellency the Secretary of the Treasury has demanded from the Board of Appraisers here to send over to Washington all the Custom House Papers relating to my case, and same have been forwarded. This is exactly what the Committee of Claims has been waiting for, and I have been assured by my lawyer that the Committee of Claims will proceed with my case without delay. Therefore, I would beg Your Excellency not to take any further steps on my behalf in the matter until you hear from me again, as my attorney, Mr. Francis E. Hamilton, maintains that it might prejudice the Committee of Claims against me. Kindly consider this, however, as a mere suggestion. Thanking Your Excellency for the interest you have taken in the matter, I beg to remain, &c.,

JOSEPH REICHARDT.

His Excellency James Bryce,  
British Ambassador,  
Washington, D.C.

## ARTICLE IX.

a. The Commission shall decide as to all claims which the High Contracting Parties agree to submit, and which arise out of controversies as to the interpretation of the fishery provisions of the Treaty of 1818 in accordance with the Award of the Arbitral Tribunal constituted by agreement of the 27th January, 1909, under Article II. of the Hague Convention of April 4, 1908. Before examining specific claims severally the Commission shall hear arguments and give rulings on questions of principle as to whether that Award admits of any claims for pecuniary liability against either High Contracting Party being raised by the other in regard to the liberties of fishery accorded by the Treaty of 1818. The total liability of such claims shall not exceed on either side \$200,000.

b. Specific claims other than those in the annexed schedules based on rulings of the Commission on such questions of principle may be presented for award by agreement of both agents.

c. Specific claims in the annexed schedules based on liberties of fishery accorded by the Treaty of 1818 shall be examined severally, and an award shall be rendered in regard to each separately; except such of them as shall be held by the Commission as being ruled out by the rulings above mentioned.



No. 12.

9811

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Sent 1.55 p.m., 6th April, 1910.)

TELEGRAM.

[Copy to Foreign Office, 9 April, 1910. L.F.]

[Answered by No. 13.]

My telegram 25 February.\* With a view to making progress with negotiations for conclusion of treaty as to pecuniary claims His Majesty's Government would be glad to know at early date decision of your Ministers as to arbitration of Cayuga Indians claim.—CREWE.

10484

No. 13.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 11.20 p.m., 8th April, 1910.)

TELEGRAM.

[Answered by No. 16.]

Your telegram, 25th February, your telegram, 6th April,† Cayuga Indians, Canadian Ministers approve proposal in your despatch 25th November last,‡ Confidential, that provision should be made for referring to arbitration question whether claim is barred by Convention of February 8th, 1853, but are unable to see any strong reason for exacting exceptional requirements of agreement of both agents in making request for decision of claim if it is once shown to be properly presentable under Pecuniary Claims Convention, and would propose that words "at the request of both agents" in penultimate line of draft clause should be omitted, and that for the word "give" the words "proceed to make" should be substituted.

Despatch follows by mail.—GREY.

10540

No. 14.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 11 April, 1910.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—To Mr. Bryce, 115, April 9/10: (Pecuniary Claims Convention—Canadian Fishery Claim.)

Reference to previous letter: Colonial Office, April 1, 8272/10.¶

Foreign Office,  
April 9, 1910.

Enclosure in No. 14.

(No. 115.)

Sir,

Foreign Office, April 9, 1910.

With reference to my telegram, No. 155, of October 15th last, I transmit to Your Excellency herewith copy of a letter from the Colonial Office stating that the Canadian Government consider that a claim should be preferred on behalf of Canada in respect of fishery privileges enjoyed by United States fishermen in

\* No. 6. † Nos. 6 and 12. ‡ No. 216 in Dominions No. 20. § See No. 18. ¶ No. 9.

excess of those conferred upon them by the Treaty of 1818, similar to that which it is proposed to put forward on behalf of Newfoundland.

I request that Your Excellency will approach the United States Government on the subject, and will endeavour to find an acceptable formula by which, if possible, effect may be given to the request of the Canadian Government.

I am, &amp;c.,

(For the Secretary of State),

LOUIS MALLET.

His Excellency

The Right Honourable

James Bryce, O.M.,

&amp;c.,

&amp;c.,

&amp;c.

10484

No. 15.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 17.]

Sir,

Downing Street, 19 April, 1910.

With reference to your letter of the 18th February,\* I am directed by the Earl of Crewe to transmit to you, to be laid before Secretary Sir Edward Grey, the accompanying copy of a telegram† from the Governor-General of Canada on the subject of the proposed reference to arbitration of the claim of the Cayuga Indians against the Government of the United States.

2. Lord Crewe does not consider it necessary to press for the retention of the phrase "at the request of both Agents" if the United States Government concur that it should be omitted: and he would suggest that that Government should be informed, in regard to the Webster Claim, that His Majesty's Government agree that if the preliminary questions as to the effect of the Convention of 1853 and estoppel by the conduct of Webster are decided in favour of the United States, the whole claim should go to arbitration on its merits before the Pecuniary Claims Commission.

3. I am to add that Lord Crewe does not consider it necessary in present circumstances to communicate with the Lords Commissioners of the Treasury in regard to the Webster Claim.

I am, &amp;c.,

FRANCIS J. S. HOPWOOD.

10540

No. 16.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Confidential.)

My Lord,

Downing Street, 21 April, 1910.

With reference to your confidential despatch of the 7th March,‡ I have the honour to request Your Excellency to inform your Ministers that the Secretary of State for Foreign Affairs has directed His Majesty's Ambassador at Washington to approach the United States Government, and to endeavour to find an acceptable formula by which effect may be given to the desire of your Ministers that a claim should be preferred, on behalf of the Dominion, in respect of fishery privileges enjoyed by United States fishermen in excess of those conferred upon them by the Treaty of 1818.

2. I have, at the same time, to acknowledge the receipt of your telegram of the 8th April,† and to state that I am in communication with Sir Edward Grey with a view to meeting the wish of your Government as to the wording of the article relative to the arbitration of the claim of the Cayuga Indians.

I have, &amp;c.,

CREWE.

\* No. 4.

† No. 13.

‡ No. 8.



11892

No. 17.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 23 April, 1910.)

[Answered by No. 20.]

SIR, Foreign Office, April 22nd, 1910.  
I AM directed by Secretary Sir E. Grey to transmit to you herewith paraphrase of a telegram addressed to His Majesty's Ambassador at Washington on receipt of your letter of the 19th instant,\* respecting the arbitration of the Webster and Cayuga Indians' claims.

Sir E. Grey notes that the Secretary of State for the Colonies does not consider it necessary in present circumstances to communicate with the Lords Commissioners of the Treasury respecting the Webster claim.

I am, &c.,  
LOUIS MALLET.

Enclosure in No. 17.

Paraphrase of Telegram to Mr. BRYCE, No. 51, dated 21st April, 1910.

Your despatch, No. 232, of 2nd November last. Pecuniary Claims Convention. His Majesty's Government agree to proposed preliminary arbitration about claim of Cayuga Indians in return for similar arbitration of "estoppel" and "barrer" questions in Webster Claim. His Majesty's Government agree that whole claim should go to arbitration on its merits before Pecuniary Claims Commission, in the event of both latter points being decided in favour of United States. You may inform United States Government accordingly.

Canadian Government suggest omission of words "at the request of both agents" from draft article enclosed in your above-mentioned despatch, as they see no reason for their retention. They also suggest substitution of words "proceed to make" for word "give" before "a final award."

These amendments appear to us quite unobjectionable.

12227

No. 18.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 25 April, 1910.)

(Confidential.)

MY LORD, Government House, Toronto, Ontario, 8th April, 1910.

I HAVE the honour to confirm a telegraphic message† which I sent to your Lordship to-day in code to the following effect:—

"In answer to your telegrams of the 25th February and 6th April,‡ Cayuga Indians, Canadian Government acquiesces in proposal contained in your despatch of 25th November last,§ Confidential, that provision should be made for referring to arbitration question whether claim is barred by Convention of 8th February, 1853; but is unable to see any good reason for exacting exceptional requirement of agreement of both agents in making request for decision of claim if it is once shown to be properly presentable under Pecuniary Claims Convention, and would propose that words "at the request of both agents" in penultimate line of draft clause should be omitted, and that for the word "give" the words "proceed to make" should be substituted.

Despatch follows by mail."

\* No. 15. † No. 13. ‡ Nos. 6 and 12. § No. 216 in Dominions No. 20.

I now have the honour to enclose copy of an approved minute of the Privy Council, upon which that message was based.

I have, &c.,  
GREY.

Enclosure in No. 18.

CERTIFIED COPY of a Report of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 6th April, 1910.

(P.C. 555.)

The Committee of the Privy Council have had before them a Report, dated 22nd March, 1910, from the Secretary of State for External Affairs, to whom was referred a confidential despatch, dated 25th November, 1909, from the Right Honourable the Principal Secretary of State for the Colonies, dealing with the claim of the Cayuga Indians against the State of New York, which it is proposed to include in the schedule of British claims under the Pecuniary Claims Convention now under negotiation between His Majesty's Government and that of the United States.

The Secretary of State for External Affairs observes that in the despatch above-mentioned it was suggested that provision should be made for determining whether, as contended by the State of New York, this claim was barred by the Convention between Great Britain and the United States of the 8th February, 1853, and the draft of an Article 9B to be inserted in the Pecuniary Claims Convention for the purpose of carrying out this suggestion was enclosed.

The Minister states that the Superintendent-General of Indian Affairs—although he would have preferred to avoid the preliminary submission—acquiesces in the proposal that the question whether the Cayuga Indians' claim is barred by the Convention of 1853 should be decided by the method suggested; but that as he is unable to see any good reason for exacting the exceptional requirement of the agreement of both agents in making a request for the decision of the claim if it is once shown to be properly presentable under the Pecuniary Claims Convention, he would propose that the words "at the request of both agents" in the penultimate line of the draft clause should be omitted, and he would further propose that for the word "give" there should be substituted the words "proceed to make."

The Committee, on the recommendation of the Secretary of State for External Affairs, advise that Your Excellency may be pleased to inform the Right Honourable the Principal Secretary of State for the Colonies, by telegraph, that if the amendments above indicated are made in the draft Article, Your Excellency's advisers would agree to its insertion in the Pecuniary Claims Convention.

All which is respectfully submitted for approval.

F. K. BENNETTS,  
Assistant Clerk of the Privy Council.

12649

No. 19.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 30 April, 1910.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—Mr. Bryce, No. 95, April 19/10: Pecuniary Claims Convention.

Foreign Office,  
April 29, 1910.

Enclosure in No. 19.

(No. 95.)

SIR, British Embassy, Washington, April 19th, 1910.  
I HAVE the honour, knowing the continued interest which you take in the long projected Convention for the settlement of pecuniary claims, to inform you that this



Embassy has for the last six months been constantly pressing the State Department to resume and make progress with the negotiations for this treaty. Unfortunately the Secretary of State shows little interest in the subject, and his subordinates, having also come quite new to it, deem themselves obliged to begin the whole thing *de novo*, and make an exhaustive examination of every claim which has been mentioned as fit to be dealt with by arbitration. Under these circumstances the delays have been interminable, and much patience has been required. There is now, however, a prospect that I may be able very shortly to report some progress and endeavours are being made to get the draft Convention, and, if possible, a schedule also, into a shape in which it may be submitted to you before the middle of May. It seems desirable that you should, if possible, receive it while Mr. Aylesworth and Sir E. Morris are in London on their way to the Hague, and the presence of Mr. Young also will be helpful, for he is thoroughly conversant with the negotiations, which have been largely conducted through him. If the answer expected from New Zealand regarding the Webster Claim has been received, or may be counted on to arrive within the next two or three weeks, not much time may be needed on our part in deciding the matter, as Canada and Newfoundland are the only other Colonies materially interested, and their representatives will be in direct contact with His Majesty's Government.

Sir Edward Grey, Bart., M.P.,  
&c., &c., &c.

I have, &c.,  
JAMES BRYCE.

12227

No. 20.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 21.]

Sir,

Downing Street, 30 April, 1910.

WITH reference to your letter of the 22nd instant,\* I am directed by the Earl of Crewe to transmit to you, to be laid before Sir E. Grey, the accompanying copy of a despatch† from the Governor-General of Canada enclosing copy of an approved minute of the Privy Council of Canada relative to the proposed arbitration of the Cayuga Indians Claim.

Sir E. Grey will observe that Canadian agreement to the draft Article suggested by Mr. Bryce is conditional on the acceptance of the omissions suggested; and he may think it well to draw the attention of the British Ambassador at Washington to this point by telegram.

I am, &c.,  
C. P. LUCAS.

13349

No. 21.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 6 May, 1910.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper: Telegram to Washington, No. 59, May 3, 1910: (Cayuga Indians' claim).

Reference to previous letter: Colonial Office, April 30—12227/10.‡  
Foreign Office,  
May 5, 1910.

Enclosure in No. 21.

TELEGRAM to Mr. BRYCE, Washington, No. 59, dated May 3rd, 1910.

My telegram No. 51 of April 21st. (Pecuniary Claims.) Canadian minute just received shows acceptance of terms of draft article is conditional on adoption of amendments set out in my telegram.

\* No. 17.

† No. 18.

‡ No. 20.

From the previous telegram of the Canadian Government it appeared that the amendments were in the nature of suggestions only.

16669

No. 22.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 2 June, 1910.)

[Answered by No. 24.]

(Confidential.)

Sir,

Foreign Office, June 1, 1910.

WITH reference to previous correspondence respecting a proposed Pecuniary Claims Convention with the United States, I am directed by Secretary Sir E. Grey to transmit to you herewith copy of a despatch from His Majesty's Ambassador at Washington enclosing a fresh draft agreement, which is submitted to His Majesty's Government by the United States Government after informal discussions with His Majesty's Embassy.

The new draft differs considerably from that previously accepted by His Majesty's Government and Sir E. Grey would therefore have preferred to have been kept informed of the progress of the negotiations at an earlier stage. He understands, however, that such an agreement can only be negotiated by means of personal communication with the State Department, and that frequent reference home would have so delayed matters as to make it impossible to reach any conclusion before the various officials of that Department, as well as the staff of His Majesty's Embassy, left Washington for their summer quarters.

For the following reasons Sir E. Grey is also disposed to think that the immediate signature of the Convention as it stands is most desirable.

In the first place an adverse award in the Atlantic Fisheries Arbitration might still further weaken the small disposition that exists at present on the part of the United States Government to refer the pecuniary claims to arbitration. Moreover, the present Convention will provide a means for the settlement of any claims on either side which may arise out of the award itself.

Secondly, there will probably be changes in the personnel of the State Department in the course of the year, with the result that the new officials may be opposed to any Convention or will in any case wish to reopen the negotiations from the beginning as was done when Mr. Knox succeeded Mr. Root in 1909.

Thirdly, this Agreement, once signed, will constitute at least a moral obligation to arbitrate pecuniary claims and will provide firm ground from which to negotiate the Schedules.

Lastly, it is understood that the draft has been approved by Mr. Aylesworth, who has strongly recommended its acceptance to the Government of Canada.

Seeing that any delay in its acceptance by His Majesty's Government will probably lead to the indefinite postponement of any settlement of these claims Sir E. Grey proposes, with the concurrence of the Secretary of State for the Colonies, to authorise His Majesty's Ambassador at Washington to sign the Convention at once.

He would, therefore, be glad to receive the views of the Secretary of State for the Colonies on the matter at His Lordship's earliest possible convenience.

I am, &c.,  
F. A. CAMPBELL.

Enclosure 1 in No. 22.

(No. 109A.)

Sir,

British Embassy, Washington, May 6, 1910.

I HAVE the honour to transmit herewith copy of a Note received from the United States Government transmitting a draft agreement for the arbitration of pecuniary claims outstanding between the Governments of Great Britain and of the United States. This agreement has been formally submitted by the United States Government at our request, as it was considered that the negotiation had now reached a stage at which it had best be put upon a formal basis, so as to avoid, if



possible, recurrence of the mishap of last year when the complete change of persons in the State Department practically blotted out all that had gone before and obliged us to begin *de novo*.

You will, I venture to hope, be of opinion after perusing this Draft Agreement that the negotiation has now at last made real progress, promising an early satisfactory conclusion, for the terms of the Agreement as it now stands, proposed by us and accepted by the State Department with only verbal alterations, differ but slightly in substance from the draft Convention already approved by you last year, and so far as they differ are more simple and more in our interest.

It will be observed that, according to the arrangement now proposed, the present draft agreement can be definitely settled and even signed as soon as approved by His Majesty's Government. The claims to be arbitrated under it will be submitted to arbitration from time to time in schedules, each of which will be an agreement in itself in so far as respects the assent to be given by the self-governing Dominions on our side and by the United States on theirs. Draft of the first of these schedules is also inclosed, and to it no objection is so far made by the United States Government. They are, however, not as yet prepared to sign this Schedule, as the officials of the Department now in charge wish for more time to examine the claims in detail, these being comparatively new to them. The present arrangement of the Schedule by which claims of both parties will be submitted jointly under convenient categories has their concurrence, and I recommend it for adoption in this and other Schedules if you see no objection. It not only permits an appearance of an equitable equivalence as to the number and value of the claims on either side, but also facilitates the specially-worded submissions appropriate to cases such as the Webster or Newfoundland claims. As matters now stand there seems to be no reason to apprehend any difficulty in a mutual acceptance of this schedule before the end of the autumn, so that the Agreement itself, together with this first Schedule, may go before the Senate after its reassembling in December.

As previously reported, every effort was made to force through a settlement in order that it might be considered by you, and if approved, submitted to the Senate during this Session. But the change of persons in the State Department and the want of organisation and of driving-power in that Department, frustrated all the exertions of the Embassy till about six weeks ago and even since then have incurred constant delays. It is possible, however, that the postponement till the close of the year of submission to the Senate may prove to be no loss, for the administration forces in Congress are at present so disorganised and disheartened that little or nothing can be expected from them, and the development of any difficulty or delay once an agreement is in the Senate is a thing to be avoided. Next winter the air may have cleared.

Some further discussion will doubtless be needed regarding the particular claims to be placed in the Schedules, but with the Agreement signed, as I hope it may be, if approved by you, before the Embassy leaves Washington for the summer, the matter can, unless unforeseen obstacles should meantime occur, be taken up next autumn on a firm basis and with the leverage afforded by the fact that both parties have pledged themselves to the general provisions of the Agreement.

I have, &c.,

JAMES BRYCE.

The Right Honourable

Sir Edward Grey, Bart., M.P.,

&c., &c., &c.

(A report of the negotiations and explanatory memoranda by Mr. Young are enclosed.)

#### MEMORANDUM.

#### PECUNIARY CLAIMS.

#### RECORD OF RECENT NEGOTIATIONS.

The greater part of the winter was spent in negotiations with Mr. J. B. Scott, Solicitor to the State Department, who had conducted the negotiations for Mr. Root under the previous Administration. It was finally found that Mr. Scott had not sufficient authority with the present Administration to get agreements made with

him accepted. Indeed, there was found to be a feeling prevalent that the Embassy had got much too much the best of the bargain and that the matter would have to be gone into *de novo*. The negotiation had accordingly to be suspended until Mr. Scott's retirement from the Department and mission to Paris in regard to the Prize Court and the Permanent Court made it possible to put the matter into fresh hands. It was then taken up by Mr. Hoyt, Councillor of the State Department; Mr. Clark, Mr. Scott's successor as Solicitor, and Mr. Chandler Anderson, a New York lawyer, who for the last twelve years has been called in by the Department for difficult work and who is their Agent in the Fisheries Arbitration. Mr. Anderson took charge of the Convention itself and Mr. Clark of the Schedule of Claims, both acting under Mr. Hoyt. These three lawyers were fortunately strong enough to eliminate other elements in the Department which had hampered the negotiations with Mr. Scott, and an agreement with them seemed sufficiently certain of acceptance by Mr. Knox to make progress possible. Informal negotiations were accordingly resumed and conferences were held several times a week, though much delay was caused by Mr. Anderson's absences in New York and the calls of other matters on the attention of the others.

The first phase of the new negotiation, in which the State Department pressed for an "open" Convention for arbitration of all claims without previous agreement, and their subsequent withdrawal from this position, has been fully reported. As soon as it was recognised by them that agreement as to the claims to be arbitrated was indispensable, it became the object of the Embassy in the first place to obtain an Agreement as to the Schedules on the favourable basis already reached with Mr. Scott, and in the second to so remodel that basis that it might seem to be a new arrangement altogether and also to be not so favourable to us as in fact it was. With this view the Schedules of either side were amalgamated in one, which was divided into categories of claims in such a manner that an even balance could be shown in regard to the categories, although in regard to the individual claims the preponderance remained heavily in our favour. This was supported by arguments as in the "Explanation" herewith attached to the Schedule, and was approved by them in principle. Moreover, arranging the Schedule in this manner in the form of questions made it possible to unload upon it from the Convention much contentious matter due to uneasiness in the minds of the three lawyers as to the terms of submission of certain claims. It was evident that the terms of reference could be varied to suit each category of claims or even each claim, and indeed was being so varied in cases where treaty rights came in, as in those of Webster and the Cayugas or in the Newfoundland claim.

This much facilitated an agreement as to the Convention itself, which, moreover, it was found could also be put on a new and more satisfactory basis. In the form approved by Mr. Root and by us and Canada it was a Convention with no provision for the arbitration or for the subsequent barring of any claims other than those in the Schedules attached by either party to it. This, as pointed out by them, caused an inequitable discrimination between claims included in the Schedules and those left out for no intrinsic demerit; made no provision for claims as to which either Government had not had cognizance, and failed to bar claims too bad or too obscure to secure admission to the Schedules. Parties with claims which had been admitted to the Schedule arbitrated and barred would, if unsuccessful, resent not having been left out; those who had not been admitted, even though not barred, would resent not having had their chance of award. It was such considerations which led them to the abortive proposal for an "open" Convention, and which had to be satisfied in order to secure their support. The solution was obviously to provide for a succession of Schedules as to each of which an agreement would be required, in which agreement provision had to be made for the assent of the Senate and of self-governing Colonies in so far as they were concerned. To provide that these Schedules should continue to be submitted after publication of the arbitration and proclamation if considered necessary so that all claimants might have a reasonable notice to bring their claims before their Governments for presentation to the other Government, and, failing objection, for submission to the Commission, so that thereby it should be made possible to bar from future presentation all claims whether so brought up, presented and thereafter submitted or no; only such claims being reserved from being barred as could not be arbitrated owing to objection of the other party. After much discussion this principle was approved.

One of the principal difficulties in getting the negotiation restarted was the nervousness of the lawyers in regard to the Senate. The present Administration



have little driving power, and the party is at present very disorganised, so that there was little chance of forcing through anything to which objection might be taken. Moreover, it was evident that they did not count on much effective intervention from the Secretary of State or the President in such a case.

It was, therefore, desirable to render the obligation to arbitrate as strong as possible, while as far as possible simplifying the terms of the Convention so as to give no opening for criticism. With this view it was suggested that the Convention be converted into an agreement to arbitrate under the Hague Convention of 1907. The addition to this Convention of Chapter IV., providing for summary arbitration, made it possible to do this without in any way altering the constitution of the Commission or any essential provision of the Convention. Thereby the Convention, or, as it has now become, the Agreement, was no longer a special compact, so to say, in the air, but was brought into relation with arbitral developments generally, and gained both by having the sanction behind it of the Hague Convention as well as a simplification of the provisions as to procedure, reference, &c. These points are developed in the "Explanation" attached to the agreement and submitted to the Americans. The change was welcomed by them, and, in fact, this alteration, together with that of the Schedule, quite changed the attitude of the American negotiators to the matter.

As soon as this change for the better was realized, a strong effort was made to force the Agreement and Schedule through in time for submission to the Senate this summer. Owing to the abstention from the matter of the Secretary of State, amounting almost to abdication, it was difficult to make the pressure effective, but it was carried to a point at which the lawyers positively refused to proceed further without more time to make themselves acquainted with the individual claims. They made no objection to any but the Philippine Customs Claims, but maintained, not without reason, that they could not pledge their Government without an exhaustive examination.

They were then, with some trouble, induced to deal with the Agreement in advance, on the lines approved by the Foreign Office in the spring of 1903—its present form making it possible to do so without prejudice to the claims to be arbitrated. Mr. Anderson, after some attempts to draft an agreement, asked us to do it, and it was accordingly prepared in its present form and accepted by him with some verbal alterations. Time was now urgently pressing, and the absence of Mr. Hoyt for a week threatened to postpone indefinitely the settlement now in sight, but the approval of Mr. Root, who enjoys a unique, though unofficial, authority in the matter, having been secured, Messrs. Anderson and Clark felt they could safely ask Mr. Knox to adopt the agreement, which he did without demur.

British Embassy,  
Washington,  
May 7, 1910.

Enclosure 2 in No. 22.

(No. 880.)

EXCELLENCY, Department of State, Washington, May 9, 1910.

As a result of our recent negotiations, which were undertaken with a view to arriving at a basis for an agreement for the submission to arbitration of certain outstanding pecuniary claims between the United States and Great Britain, I have the honour to enclose herewith, for your consideration, a draft of a proposed agreement for that purpose.

I have, &c.,  
HUNTINGTON WILSON,  
Acting Secretary of State.

His Excellency the  
Right Honourable James Bryce, O.M.,  
Ambassador of Great Britain.

AGREEMENT FOR THE SUBMISSION TO ARBITRATION OF PECUNIARY CLAIMS OUT-  
STANDING BETWEEN THE UNITED STATES AND GREAT BRITAIN.

Whereas the United States and Great Britain are signatories of the Hague Convention of 18th October, 1907, for the pacific settlement of international

disputes, and are desirous that certain pecuniary claims outstanding between them involving questions of a legal nature or relating to the interpretation of treaties should be referred to arbitration as recommended by Article XXXVIII. of that Convention:—

Now therefore it is agreed that such claims as are contained in the Schedules drawn up as hereinafter provided shall be referred to arbitration under Chapter IV. of the said Convention, and subject to the following provisions:—

Article I.

Either Party may at any time within \_\_\_\_\_ months from the date of the confirmation of this Agreement present any claims against the other which it desires to submit to arbitration, and any or all of the claims so presented, if agreed upon by both Parties, and unless reserved as hereinafter provided, shall be submitted to arbitration in schedules to be agreed upon on the part of the United States by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the concurrence of the self-governing Dominions of the Empire as to the submission of claims affecting their interests.

Either Party shall have the right to reserve for further examination any claims so presented for inclusion in the Schedules: and claims so specifically reserved shall not be prejudiced or barred by reason of anything contained in this Agreement.

Article II.

All claims outstanding between the two Governments at the date of signature of this Agreement and originating in circumstances or transactions anterior to that date, whether submitted to arbitration or not, shall thereafter be considered as finally barred unless specifically reserved by either Party for further examination as provided in Article I.

Article III.

The Arbitral Tribunal shall be constituted in accordance with Article 87 (Chapter IV.) and with Article 59 (Chapter III.) of the Hague Convention which are as follows:—

Article 87.—Each of the parties in dispute appoints an Arbitrator. The two Arbitrators thus selected choose an Umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the members of the Permanent Court exclusive of the members appointed by either of the parties and not being nationals of either of them; which of the candidates thus proposed shall be the Umpire is determined by lot.

The Umpire presides over the Tribunal, which gives its decisions by a majority of votes.

Article 59.—Should one of the Arbitrators either die, retire, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

Article IV.

The Arbitral proceedings shall be regulated by Chapter IV. of the Convention, and any such Articles of Chapter III., excepting 53 and 54, as may in the opinion of the Tribunal be applicable, and not inconsistent with the provisions of this Agreement.

Article V.

The Tribunal is entitled, as provided in Article 74 (Chapter III.) of the Convention to issue rules of procedure for the conduct of business, to decide the forms, order, and time in which each party must conclude its arguments and to arrange all formalities required for dealing with the evidence.

The Agents and Counsel of the Parties are authorised as provided in Article 70 (Chapter III.), to present orally and in writing to the Tribunal all the arguments they may consider expedient in support or in defence of each claim.

The Tribunal shall keep record of the claims submitted, and the proceedings thereon, with the dates of such proceedings. Each Government may appoint a Secretary, to act together as joint Secretaries of the Tribunal, who shall be subject



to its direction; and the Tribunal may appoint and employ any other necessary officer or officers to assist it in the performance of its duties.

The Tribunal shall decide all claims submitted upon such evidence or information as may be furnished by either Government; and shall not be bound by technical rules of evidence.

The Tribunal is authorized to administer oaths to witnesses and to take evidence on oath.

The proceedings shall be in English.

#### Article VI.

The Tribunal shall meet at Washington at a date to be hereafter fixed by the two Governments; and may fix the time and place of subsequent meetings as may be convenient, subject always to special direction of the two Governments.

#### Article VII.

Each Member of the Tribunal upon assuming the function of his office shall make and subscribe a solemn declaration in writing that he will carefully examine and impartially decide in accordance with treaty rights and with the principles of international law and of equity all claims presented for decision, and such declaration shall be entered upon the record of the proceedings of the Tribunal.

#### Article VIII.

All sums of money which may be awarded by the Tribunal on account of any claim shall be paid by the one Government to the other, as the case may be, within eighteen months after the date of the final award, without interest and without deduction, save as specified in the next Article.

#### Article IX.

Each Government shall bear its own expenses. All reasonable and necessary joint expenses of the Tribunal shall be defrayed by a rateable deduction on the amount of the sums awarded by it, provided always that such deduction shall not exceed the rate of five per cent., on the sums so awarded; the deficiency, if any, shall be defrayed in equal moieties by the two Governments.

#### Article X.

The present Agreement shall be binding only when confirmed by the two Governments by an exchange of Notes.

### MEMORANDUM.

#### PECUNIARY CLAIMS.

#### REVIEW OF AGREEMENT.

Agreement. *Preamble.* This is not a "special" agreement, *i.e.*, a "compromis" under Chapter III. of The Hague Convention, but an Agreement "accord" under Chapter IV., "questions of a legal nature or relating, etc." The form of wording in the General Arbitration Treaty is followed. That of Article 38 is more cumbersome and confusing; the import is the same.

In referring to arbitration under Chapter IV. the provisions of Chapter III. are also adopted in so far as applicable as provided in Chapter IV. The question as to what is applicable is left to the Tribunal (see Article IV.).

*Articles I and II.* These articles read together provide for the manner of submission of claims, and have been explained in the previous memorandum. "Reserve for further examination" is a euphemism for—refuse to arbitrate. The clause referring to Colonial concurrence is adopted from the General Arbitration Treaty.

*Article III.* This provides for the Constitution of the Tribunal; and will require no alteration in the arrangements already approved, as to nominating a national arbitrator on each side with Lammasch as neutral arbitrator. The quoting The Hague Convention will, it is expected, prevent question. It is also believed

that Lammasch would have hesitated to accept appointment to the Tribunal unless it had been given the authority and weight of The Hague Convention. There is no difficulty about arranging beforehand for his appointment.

The second paragraph permits of a change of the national arbitrator to meet Colonial wishes, and is recognized by the Americans as so doing.

*Article IV.* has already been referred to.

*Article V.* contains provisions as to procedure. The two first reproduce articles of Chapter III. of the Convention. They are not quoted because some slight verbal alterations are requisite to meet the present case. Such is the "conduct of business" instead of the "conduct of the case" (*procès*).

The other paragraphs are supplementary to the provisions of The Hague Convention.

*Article VI.* as to place or places of meeting is taken over from the arrangement with Mr. Root. The convenience of meeting at Washington with power to change has never been questioned.

*Article VII.* is considered of importance by the Americans who, even though the Tribunal will now be guided by the general principles and precedents of arbitration as laid down at The Hague, nevertheless wish to reserve the right of pleading its want of jurisdiction over certain claims as not being properly "international." They cannot be debarred from raising this plea, but will not do so with any effect under this wording. The insertion of an "of" before equity and the substitution of "equity" for justice will prevent the Tribunal from declining jurisdiction over claims such as Customs matters. The formula "with treaty rights and with principles of international law and of equity" is framed in relation to the questions as to barring clauses, etc., as asked the Tribunal in the Schedule.

*Articles VIII. and IX.* are taken over from the old special Convention, and require no comment.

*Article X.* is adopted from the Special Agreement in the North Atlantic Fisheries. It enables this agreement to be signed now without schedules to be sent before the Senate, with or without schedules annexed, when convenient, and to be thereafter put into force. The moral obligation required for the further conduct of the matter will be obtained as soon as it is signed; but obligation will only begin with the confirmation.

It is to be noted that the period during which claims may be presented for submission as provided in Article I. runs from confirmation of the agreement.

British Embassy,  
Washington,  
May 7, 1910.

### MEMORANDUM (AS COMMUNICATED TO THE AMERICAN NEGOTIATORS).

The change of form from a special Convention to that of an agreement under Chapter IV. of The Hague Convention of 1907 is recommended for the following reasons:—

1. It will facilitate acceptance of the terms of reference to arbitration by those elements on both sides who, without being represented in the negotiation, have practically a veto on its results, and, consequently, a power of amendment, such as the Senate and Colonies; for the authority of The Hague Convention will be sufficient recommendation of the principles, and the adoption of the procedure laid down in the Convention will tend to prevent amendment. Such an agreement would, therefore, have a better chance of not being subjected to the delay by colonial objections which wrecked the Root draft Convention; or to interpretative riders by the Senate, such as that which has delayed the Boundary Waters Treaty, or amendments such as wrecked the Pauncefoot Arbitration Convention.

2. It will prevent a construction derogatory to the policy of arbitration pursued by both countries being put in the notes reading pecuniary claims out of the General Arbitration Treaty. This was done principally because arbitration by the Permanent Court at The Hague was unsuitable, and at the time the Convention of 1907 which, in Chapter IV., provides an alternative simple form of arbitration, had not yet been ratified. The present plan will make it clear that "existing" pecuniary claims were excluded from the General Arbitration Treaty, not as an



exercise of any principle adverse to their arbitration but for expediency of procedure.

3. The agreement will, by the simple and summary form which it can be given, show the facilitation of arbitration effected by the The Hague Convention, and serve as a good precedent in the development of the scheme of that Convention instead of being a derogation from its scope, as a Special Claims Convention would be.

4. It will facilitate the difficult task of negotiating the schedule and the terms of reference of the claims. The extent and quality of the jurisdiction assigned to a Tribunal instituted under the Convention and the exercise of its powers are established; but this is not the case when the Tribunal is instituted by a special Convention. In the latter case the powers and jurisdiction of the Tribunal and even the principles of international law it is to apply must be carefully provided for. Such provision in the case of the arbitration of claims may raise highly contentious questions.

5. It will, therefore, enable an agreement as to the Tribunal and procedure to be initiated in anticipation of an agreement as to the terms of reference of the claims in the joint schedule. Because, as stated above, a special tribunal must have its powers carefully defined; such definition may well prejudice the interest of either party; neither party, therefore, would agree to any definition until it knew whether it would do so, and it could not know until the schedule was settled.

6. Consequently it will prevent the Fisheries Arbitration from giving rise to pecuniary claims without any arbitration being provided for them; as it is apprehended may happen. But an agreement is already initialled, or, better still, signed, and a schedule including the fisheries hypothetical claims is under negotiation. When The Hague award comes out, should that award give ground for a claim on either side, it is practically provided for and limited.

7. The definite conclusion of an agreement, even without schedules, will prevent any impression that conditions are now so much less favourable to the arbitration of claims than a year ago that further negotiation is useless.

#### EXPLANATION OF THE SCHEDULE.

(As Submitted to the American Negotiators—Excepting Notes in Brackets.)

In the arrangement of this Schedule British and American claims are not separated, but are grouped together under a classification congruous to their character and conducive to the convenience of their consideration by the Commission. By this means the appearance of a bargain is avoided, which appearance would be derogatory to the dignity of the parties and not consonant with the spirit of arbitration, but none the less it will be found that a fair balance has been maintained.

Thus, the first category, No. 1, consists exclusively of claims against the United States Government; for, with four exceptions, it consists of claims in which liability has been admitted by the State Department, but payment of which has been delayed owing to circumstances extrinsic of their merits. These claims are, therefore, submitted to the Commission merely for award as to the amount of indemnity, except the three claims specified in the last paragraph in which liability is not yet admitted, and on which the Commission is asked to rule in this respect. The fourth claim, as to which liability has not been formally admitted, is that of the Yukon lumber. A statement of this claim is annexed as it seems unlikely the United States Government will wish to dispute liability altogether under the circumstances. The amount is trifling. (Note.—It will be noticed that the Hemming claim has been added since the agreement with Mr. Root. They also accept liability in the lumber claim subject to further examination.)

This category, while entirely British, is accordingly almost entirely of a peculiar character which should properly take it altogether out of consideration as to compensatory concession.

The next category, No. 2, contains the most important claims of both parties, being all highly contentious, for very large amounts and involving domestic and international questions of great difficulty. It will be observed that the procedure laid down in Article VII. is closely followed. A question of treaty right is referred in paragraph (a) which concerns an important claim of either party, *i.e.*, that of

the Webster and that of the Cayuga Indians; after decision of this barrier question, the two claims are decided in accordance with international law and an award made on their merits as required by equity. The same procedure, less the barring question, is followed in the other claims. It will be observed that the balance is heavily in favour of the United States, there being no British counterpoise to their Fiji claims. (Note.—This is true, but these claims would not seem to involve any real risk of liability, though formidable in amount.)

The next category, No. 3, concerns smaller claims of a different character, being more specific and in many cases involving personal hardship. If the Philippine and Sierra Leone claims are considered as balancing each other and the Cadenhead claim balanced against the Medeiros claim, there remains to the good of His Majesty's Government the insignificant claims of Hardman and Wrathall.

Category No. 4 of Canadian and American shipping cases would be pretty evenly balanced, but that the "Frederick Gerring" is so highly contentious that its inclusion inclines the scale in favour of the United States.

Category No. 5, being for refund of Customs duties, must on the nature of it be exclusively British. The Philippine Customs claims have, however, been reserved for further examination, which, in view of their importance, is a very considerable concession. (Confidential Note.—This concession is not really so important as it might seem because these claims having been presented subsequently to the signature of the General Arbitration Treaty are not one of those "existing pecuniary claims" excluded from its operation. It is, therefore, open to us, should the United States Government persist in refusing to arbitrate them under this Agreement, to press for a Hague arbitration of them. The liability involved is sufficient to justify this. But as other Powers are also interested to an almost equal extent, such a proposition would probably induce the United States Government to admit their arbitration in this Agreement in order to avoid a special arbitration in regard to them from which other Powers could not be excluded.)

Category No. 6, on the other hand, is exclusively American, containing, as it does, all the fishery claims. The question of principle raised by Newfoundland does not go to award.

This category again applies the procedure of providing for a preliminary examination of treaty rights to be followed by one of the principles of international law. Treaty right in this case is represented by the Hague Award, the principles of which will be applied to these pecuniary claims concerning the controversies it settles. The object of this provision and of the limitation of liability has already been fully explained in my letter of 23rd December, 1909,\* to Dr. Scott for submission to Mr. Knox; a copy of the memorandum enclosed in it is herewith annexed. The only change made here is adapting the draft article previously proposed to inclusion in the schedule. The transfer of the provision from the Convention to the Schedule is an advantage. (Note.—No mention has been made to the American negotiators of the Canadian hypothetical claim. It is fully provided for by this formula within the limits of the sum to be fixed. Two hundred thousand dollars has been mentioned to them, but they attach no particular importance to that sum, and it could be increased to allow of a Canadian claim with reference being made to it. In any case the award will be out now before this question is again approached, when the issues will have changed and the whole category may possibly disappear. We have secured enough here to obtain Colonial adhesion to the Agreement, which is all that is required at present.)

#### Synopsis.

Category 1.—All British; but should properly be excluded from compensatory considerations.

Category 2.—Balance heavily in favour of Americans.

Category 3.—Balance slightly in favour of British.

Category 4.—Balance slightly in favour of Americans.

Category 5.—All British.

Category 6.—All American.

\* See enclosure in No. 4.



## SCHEDULES.

1. Claims based on (a) contract services to the officers or officials of other Governments, (b) damages done by them.

What indemnity should be awarded subject to the terms of the Convention in the following claims in which liability is admitted:—

A claim for freight on coal carried by the s.s. "King Robert" to Manila in 1900; a claim for timber supplied in 1900 from Yukon territory, and Mr. H. J. R. Hemming's claim for legal services to the United States Consul at Calcutta in 1894.

What indemnity should be awarded subject to the terms of the Convention in the following claims in which liability is admitted:—

Claims of the Canadian Electric Light Company and Great North-Western Telegraph Company and of the Cuban Submarine Telegraph Company and the Eastern Extension Cable Company for damage done to cables, and of the owners of the s.s. "Eastry" and of the s.s. "Lindisfarne" for damages due to collisions.

Whether there is any international liability in the claims of the owners of the s.s. "Newchwang," of the s.s. "Canadienne" and of the s.s. "Sidra" for damages by collisions, and if there is, what indemnity should be awarded, subject to the terms of the Convention.

2. Claims for damages due to interference with alleged real property rights.

(a) Whether the terms of the Convention of 1853 bar the claims of W. Webster for land grants in New Zealand, the claim of the Cayuga Indians based on real property rights in New York State; if not so barred, whether there is any international liability; and, if there is, what indemnity should in each case be awarded, subject to the terms of the Convention.

(b) Whether there is any international liability in regard to the claim of A. G. Studer based on land grants in Johore State; or that of the Rio Grande Dam and Irrigation Company for rights in New Mexico territory; or those of G. R. Burt, R. H. Benson, J. N. Brower, and I. B. Williams, based on land grants in the Fiji Islands, and, if there is, what indemnity should in each case be awarded, subject to the terms of the Convention.

3. Claims for damages allegedly due to military operations or civil disturbances.

Whether there is any international liability in regard to the claims of the Philippine Mineral Syndicate, Hoskyn and Company, Stevenson and Company, Ker and Company, W. Higgin, H. L. P. Chiene and C. N. Chiene, for losses in-

curring in the Philippine Islands in 1898-9; of Hardman for losses incurred in Cuba in 1898; of the Home Frontier and Foreign Missionary Society and of D. Johnson for losses incurred in Sierra Leone in 1898; of F. I. Medeiros for losses due to his detention in 1857; of Wrathall for losses incurred at Chickamauga in 1898; and of the relations of Miss Cadenhead, shot at Fort Brady in 1907; and, if there is, what indemnity should in each case be awarded, subject to the terms of the Convention.

4. Claims for damages due to detention of vessels for alleged infractions of municipal law.

Whether there is any international liability in regard to claims based on the seizure or detention of the following vessels:—

"Lord Nelson," "Coquitlan," "Favourite," "Wanderer" and "Kate," "Frederick Gerring," "R. T. Roy" and "North," and, if there is, what indemnity should in each case be awarded, subject to the terms of the Convention.

5. Claims for refund of Customs duties alleged to have been illegally levied.

Whether there is any international liability to refund duties on the following goods:—

Hay imported from Canada in the period 1866-1881, goods imported by Messrs Reichardt at New York in

6. Claims arising out of controversies as to the fishery provisions of the Treaty of 1818 as interpreted by the award of the Hague Tribunal constituted by Agreement of 27th January, 1909.

Whether the award admits in principle of any general claim for pecuniary liability against either party to the arbitration in regard to the liberties of fishery in question; it being understood that the total liability which may be claimed on either side in this respect shall not exceed

Whether there is any pecuniary liability in any claim based on a ruling of the Commission given as above in regard to the question of treaty right there referred to presented by either party and submitted to the Commission by agreement of both parties; or in the following specific claims herewith submitted:—David J. Adams, Cunningham and Johnson, Davis Brothers, Gardner and Parsons, Gorton Pew Fisheries Company, W. K. Jordan and Orlando, J. Macdonald, J. L. Morton, H. Parkhurst and Company, J. Pew and Sons, 2 claims; D. B. Smith and Company, 2 claims; S. Smith and Company, D. B. Smith and Company, Elector, Carl C. Young, 2 claims; T. H. White, Sarah Putnam, Thomas Bayard, Arethusa, Athlete, H. A. Nickerson, Bessie H. Wells; and, if there is, what indemnity should be awarded in each or any case.



17287

No. 23.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 8 June, 1910.)

[Answered by No. 24.]

SIR, Foreign Office, June 7th, 1910.  
I AM directed by Secretary Sir E. Grey to transmit to you herewith paraphrase of a telegram from His Majesty's Ambassador at Washington respecting the proposed Pecuniary Claims Convention with the United States.

The Secretary of State for the Colonies will observe that Mr. Bryce is anxious to be authorized to make some communication to the State Department on the subject before leaving Washington for the summer on the 10th instant.

Sir E. Grey would therefore be glad to receive an answer to the letter from this Department of the 1st instant\* at your earliest convenience.

I am to add that the claims mentioned in the last paragraph of Mr. Bryce's telegram are those arising out of the military operations in the Philippines in 1898-9. They do not affect any British Colony.

I am, &c.,  
LOUIS MALLET.

Enclosure in No. 23.

PARAPHRASE of TELEGRAM from Mr. BRYCE, Washington, June 7th, 1910.

(No. 30.)

May I hope for an answer by telegraph to my despatch, No. 109A, of the 6th ultimo, respecting the Pecuniary Claims Convention? Embassy leave for their summer quarters on June 10th. It is therefore important to sign the Convention before that date if possible, or at any rate to convey to the United States Government the views of His Majesty's Government.

When the consideration of the schedules is resumed in detail, the claims referred to in your telegram, No. 64, of May 9th, shall be communicated to the United States Government. Such consideration has been postponed for the present by agreement

16669

No. 24.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 25.]

SIR, Downing Street, 8 June, 1910.  
I AM directed by the Earl of Crewe to acknowledge the receipt of your letter of the 1st of June,\* on the subject of the proposed Pecuniary Claims Convention with the United States.

2. In deference to the wishes of Secretary Sir E. Grey, Lord Crewe is prepared to agree that His Majesty's Ambassador at Washington should be authorised to sign the Convention at once, on the distinct understanding that the acceptance of the Convention does not involve the acceptance of the proposed schedules without further consideration.

3. I am, at the same time, to point out that Article 1 of the draft Convention goes beyond the terms of the General Arbitration Treaty of 1908, by rendering the concurrence of a self-governing Dominion essential to the submission to arbitration of a pecuniary claim affecting that Dominion. The General Arbitration Treaty of 1908 only empowered His Majesty's Government to make the concurrence of a self-governing Dominion a condition precedent for submitting a question to arbitration, but it did not in terms require His Majesty's Government to obtain such concurrence.

I am, &c.,  
C. P. LUCAS.

\* No. 22.

17459

No. 25.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 9 June, 1910.)

[Answered by No. 28.]

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—To Washington, telegram 79, June 9, 1910: Pecuniary Claims Convention.

Reference to previous letter: Colonial Office, June 8, 16669/10.\*  
Foreign Office,  
June 9, 1910.

Enclosure in No. 25.

TELEGRAM to Mr. BRYCE, Washington.

Foreign Office, 9 June, 1910. No. 79 (R). Your telegram No. 30 (of June 6, Pecuniary Claims).

You may sign Convention at once on the distinct understanding that signature does not involve acceptance of schedules without further consideration.

The Colonial Office point out that the Convention goes beyond the General Arbitration Treaty in rendering the concurrence of a self-governing Dominion essential to the submission of a pecuniary claim to arbitration.

18646

No. 26.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 18 June, 1910.)

(Confidential.)

MY LORD, Government House, Ottawa, 8 June, 1910.

WITH reference to previous correspondence regarding the Pecuniary Claims Convention, I have the honour to transmit herewith for your Lordship's information copy of a despatch which I have addressed to His Majesty's Ambassador at Washington, covering copies of an approved Minute of the Privy Council for Canada.

Your Lordship will observe that there is considerable opposition on the part of my responsible advisers to the proposal that the Tribunal shall not be bound by technical rules of evidence.

I have, &c.,  
GREY.

Enclosure in No. 26.

(No. 68. Confidential.)

SIR, Government House, Ottawa, 7th June, 1910.

I HAVE the honour to transmit herewith, for Your Excellency's information, copy of an approved Minute of His Majesty's Privy Council for Canada with reference to the most recent draft agreement for the submission to arbitration of the pecuniary claims outstanding between the United States and Great Britain.

Your Excellency will observe that my responsible advisers are of the opinion, with reference to Article V., that the provision that the Tribunal shall not be bound by technical rules of evidence is not entirely satisfactory. The general principles by which the value of evidence is determined are common to the systems of both Great Britain and the United States, and my responsible advisers would prefer a stipulation to the effect that these principles shall govern, or the restoration of the former clause.

\* No. 24.



They consider that the facts should be put in proof upon legal evidence, and that the principles of decision stated in the former draft should be quite acceptable.

I have, &c.,  
GREY.

His Excellency  
The Right Honourable James Bryce, P.C.,  
&c., &c., &c.

(P.C. 1183.)

CERTIFIED COPY OF A REPORT OF THE COMMITTEE OF THE PRIVY COUNCIL, approved by HIS EXCELLENCY THE GOVERNOR-GENERAL on the 7th June, 1910.

The Committee of the Privy Council have had before them a Report, dated 2nd June, 1910, from the Right Honourable Sir Wilfrid Laurier, stating that he has had under consideration copy of the most recent draft agreement for the submission to arbitration of the pecuniary claims outstanding between the United States and Great Britain submitted by His Majesty's Ambassador at Washington.

The Minister observes that this draft agreement differs materially from the draft Convention formerly proposed. He desires to direct attention especially to that paragraph of Article V. of the present draft which provides that the tribunal shall decide all claims submitted upon such evidence or information as shall be furnished by either Government, and shall not be bound by technical rules of evidence.

The Minister further observes that the corresponding article of the former draft Convention provides that the Commissioners shall investigate and decide the claims "upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim."

The Minister is apprehensive that some prejudice may result from excluding the application of technical rules of evidence. Considering that the general principles by which evidential value is determined are common to the systems of both Great Britain and the United States, he thinks that these principles may properly be allowed to govern for the purposes of the determination of these claims, and he would prefer a stipulation to that effect, or at all events the restoration of the former clause.

Article VII. of the present draft agreement relating to oath of office to be taken by each member of the tribunal requires that he shall undertake to decide "in accordance with treaty rights and with the principles of international law and of equity all claims presented for decision."

Article VI., which is the corresponding article of the former draft Convention, provides that "all claims submitted to the said Commissioners shall be examined and decided upon their merits in accordance with the principles of international law, and with justice and equity irrespective of objections of a technical nature."

The Prime Minister further states that he has considered the explanation of the proposed change stated in the memorandum from the British Embassy accompanying the draft agreement, but he does not appreciate these reasons. It appears to him that the facts should be put in proof upon legal evidence, and that the principles of decision stated in the former draft should be quite acceptable.

The Committee advise that Your Excellency may be pleased to forward a copy hereof to His Majesty's Ambassador at Washington.

All which is respectfully submitted for approval.

F. K. BENNETTS,  
Assistant Clerk of the Privy Council.

21403

No. 27.

SIR EDWARD GREY to MR. BRYCE (WASHINGTON).

[See enclosure in No. 37.]

(No. 198.)

SIR,

Foreign Office, June 23, 1910.

I TRANSMIT to your Excellency herewith copy of a question asked in the House of Commons with regard to the signature and publication of the Pecuniary Claims Convention with the United States.

You will observe from my answer that I have undertaken to communicate with the United States Government with regard to the publication of this treaty, but I presume that until the convention is passed by the Senate, there can be no question of its publication. If it is not ratified by the Senate I should wish to introduce into it some alteration in the wording, concerning which I propose to address your Excellency in a separate despatch. I should also be glad to learn whether you have had an opportunity of discussing with the United States Government the general question of the secrecy of treaties prior to ratification, as proposed in your Excellency's telegram No. 42 of the 22nd February, 1909.\*

I am, &c.,  
E. GREY.

Enclosure in No. 27.

QUESTION ASKED IN THE HOUSE OF COMMONS, JUNE 20, 1910.

MR. MITCHELL-THOMSON.—To ask the Secretary of State for Foreign Affairs whether His Majesty's Ambassador in Washington has been authorised to sign a pecuniary claims agreement with the Government of the United States; what are the provisions of this agreement; and when papers will be laid.

Answer by MR. MCKINNON WOOD (for Sir E. Grey).

The answer to the first part of the question is in the affirmative. We are in communication with the United States Government with regard to the publication of the treaty.

18646

No. 28.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by Nos. 29 and 30.]

SIR,

Downing Street, 23 June, 1910.

WITH reference to your letter of the 9th June,† I am directed by the Earl of Crewe to transmit to you, to be laid before Secretary Sir Edward Grey, copy of a despatch‡ from the Governor-General of Canada on the subject of the Pecuniary Claims Convention.

2. Lord Crewe will be glad to know whether the treaty has yet been signed and what reply has been returned by His Majesty's Ambassador at Washington to the objections which the Canadian Government appear to have entertained to the wording of the treaty.

I am, &c.,  
C. P. LUCAS.

19838

No. 29.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 23 June, 1910.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper: To Mr. Bryce, No. 84, Telegraphic, June 27: (Pecuniary Claims Convention). Reference to previous letter: Colonial Office, June 23, No. 18646/1910.§

Foreign Office,  
June 27, 1910.

\* See 6675/09; not printed.

† No. 25.

‡ No. 26.

§ No. 28.



Enclosure in No. 29.

Sir EDWARD GREY to Mr. BRYCE (Washington).

(No. 84.) R.

Foreign Office, June 27, 1910.

My telegram No. 79 [of 9th instant].

I presume that the Pecuniary Claims Convention has not been signed, as Canada objects to Articles 5 and 7.

There are other amendments which we desire to make.

19877

No. 30.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 28 June, 1910.)

SIR,

Foreign Office, June 28th, 1910.

With reference to your letter, 18646, of the 23rd instant,\* I am directed by Secretary Sir E. Grey to transmit to you herewith copy of a telegram from His Majesty's Ambassador at Washington stating that the Pecuniary Claims Convention with the United States has not yet been signed.

A copy of the Treaty† showing the amendments which Sir E. Grey considers desirable is also enclosed herewith, for any observations which the Secretary of State for the Colonies may wish to make, but Sir E. Grey proposes to defer further action in the matter pending the receipt of the despatch to which Mr. Bryce refers in the last sentence of his telegram.

Sir E. Grey observes that it will also be necessary to alter Article 5 of the Convention in order to meet the objections of Canada.

I am, &c.,  
LOUIS MALLET.

Enclosure 1 in No. 30.

Mr. BRYCE to Sir EDWARD GREY.

(Received 8 a.m., June 28, 1910.)

(No. 34.) R.

Dublin, June 27, 1910.

Your telegram No. 84: Pecuniary claims.

Agreement not yet signed. We have been awaiting answer from the Canadian Government to a despatch sent to them a few days ago after a conversation with the officials of the State Department on objections raised by Canada.

This despatch goes to you by mail to-day.

20322

No. 31.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 4 July, 1910.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper: Mr. Bryce (Dublin, United States of America), No. 36, Telegraphic, June 30: (Pecuniary Claims). Reference to previous letter: Foreign Office, June 30, 1910.‡

Foreign Office,

July 2, 1910.

\* No. 28.

† Not reprinted.

‡ 20098: not printed.

Enclosure in No. 31.

PARAPHRASE of TELEGRAM from Mr. BRYCE, Dublin, No. 36, dated June 30th, 1910.

Pecuniary Claims Convention. See your telegram, No. 85, of the 29th instant. The object of signing the Convention immediately was that the ground might be cleared by settling general principles as accepted by both Governments and especially that the United States Government might, before the delivery of the Fisheries Award, be committed to those principles. It was not, however, intended that the Convention should be submitted to the Senate until completed by schedules of claims; the Senate has adjourned until December.

As to Article 7, the reasons which suggested its present form can be better explained by Young than by cable. United States would probably assent if Anderson should agree to modifications of it such as would meet your and Canadian views.

Such amendments as relate to drafting might, if you think fit, be usefully discussed at The Hague by Young, Aylesworth, and Anderson, the latter having acted for the United States in drafting the Convention.

20323

No. 32.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 4 July, 1910.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper: To Mr. Bryce (Washington), Telegram, No. 86, July 2: (Pecuniary Claims). Reference to previous letter: Foreign Office, June 30, 1910.\*

Foreign Office,

July 2, 1910.

Enclosure in No. 32.

TELEGRAM from FOREIGN OFFICE to Mr. BRYCE, dated 2nd July, 1910.

Your telegram, No. 86. (Pecuniary claims.) We will communicate amendments we wish inserted as soon as we receive assent of Canadian Government.

20661

No. 33.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 6 July, 1910.)

[Answered by L.F. transmitting copy of No. 34.]

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—Mr. Bryce (Washington), No. 144, June 27: Pecuniary Claims.

Reference to previous letter: Foreign Office, July 2.†

Foreign Office,

July 6, 1910.

Enclosure in No. 33.

(No. 144.)

SIR,

British Embassy, Dublin, N.H., June 27, 1910.

I HAVE the honour to transmit herewith copies of a despatch‡ from the Canadian Government, enclosing an approved Minute of His Majesty's Privy Council

\* 20098: not printed.

† No. 32.

‡ Enclosure in No. 26.



for Canada stating the objections of the Dominion Government to the Pecuniary Claims Draft Agreement; and also copies of a despatch which I addressed to the Dominion Government in reply, after a discussion of the question with the officials of the State Department.

I had deferred sending these despatches to you, since I had hoped before this to have had the reply of the Canadian Government to my communication. As, however, the mail goes to-day, I have thought it well to delay no longer.

I have, &c.,  
JAMES BRYCE.

The Right Honourable  
Sir Edward Grey, Bart., M.P.,  
&c., &c., &c.

SIR, British Embassy, Dublin, N.H., June 18, 1910.

I HAVE the honour to acknowledge the receipt of the Governor-General's despatch of the 7th June, 1910, enclosing copy of an approved Minute of the Privy Council of Canada containing observations on the draft agreement for the settlement of pecuniary claims proposed by the United States Government and enclosed in my despatch, No. 82.

I have discussed with the United States Government Department of State the substance of the objections mentioned in the minute aforesaid.

As respects Article V. the Department observe that they do not think the meaning and effect of the Article as now drafted differ in substance and effect from that of Article IV. of the former draft, which provided that the Commission should "receive and consider all documents or statements presented by or on behalf of the respective Governments," Article V. providing, further, that claims "should be examined and decided . . . irrespective of objections of a technical nature." The words "not be bound by technical rules of evidence" were intended to relieve the Commissioners from the necessity of excluding evidence substantially good but against which some purely technical objection might be brought. For instance, the common law rule that the evidence to be given must always be the best evidence obtainable is sometimes used to exclude documentary evidence of a fact because there may be some witness who might possibly be procured to speak to the fact, although the document supplies sufficiently good evidence. So, too, small and purely technical objections are often raised and sometimes sustained, and that in the United States much more than in England and Canada, where a prisoner is being tried on a criminal charge, though they would be thought too artificial to be regarded in a civil suit. It was accordingly deemed proper when the Agreement was being framed that the Commissioners should be free to admit evidence which they held to be good without being forced to reject it on purely technical grounds, whatever their views of its value.

Considering that the Commissioners will be skilled lawyers of eminence and experience and that there is no reason to suppose that Canada will be any more likely than the United States to suffer from the discretion proposed to be entrusted to these Commissioners, there would not seem to be anything dangerous in the words under discussion; but if it is desired to press the point I can ask the United States Government to omit the words and revert to the language of the former draft.

As respects Article VII. of the present draft, the language employed was designed to enlarge the scope of the reference by securing that, where there was involved some question of treaty right or some principle of international law, the question should go before the Commission on its merits and not be stopped *in limine* by a question of jurisdiction, such, for instance, as that the matter is one for a local court and that the local remedies in the Courts have not been exhausted, or that decisions have already been given in those courts. It was decided that in such case the substantial issue should be allowed to go before the Commissioners on the merits. Similarly, the addition of the word "Equity" was meant to cover, and is understood by both parties as covering, cases in which it might be difficult to bring the claim under any particular treaty or rule of international law; the claim is nevertheless put forward upon a broad principle of right, giving ground for compensation which ought not to be withheld from the Commissioners by a technical objection. On examining the language of Article V. of the former draft, it will be found to be very similar in effect and to cover practically the same ground.

Here as in the other article, if there be any difference in the effect of the words, it is one which will apply equally to Canada and to the United States; and it does not appear that Canada has anything to lose by the change.

All questions relating to the particular claims to be admitted to the arbitration or excluded therefrom are reserved for future consideration, when the schedules of claims for adjudication have to be settled.

I shall be glad to hear at as early a date as convenient whether these explanations meet the objections which have presented themselves to the Dominion Government, or, if not, what suggestions or arguments it is desired that I should address to the United States Government on the subject and especially as regards Article VII.

I have, &c.,  
JAMES BRYCE.

The Honourable  
Desiré Girouard,  
&c., &c., &c.,  
Administrator of Canada,  
Ottawa, Canada.

20747

No. 34.

CANADA.

THE ACTING GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 7.40 p.m., 6th July, 1910.)

TELEGRAM.

[Copy to Foreign Office, 8 July, 1910. L.F.]

Following message sent to-day His Majesty's Ambassador at Washington:—

"After further consideration my Ministers consent to draft of Agreement Pecuniary Claims Convention enclosed in your despatch, 14th May, No. 82, with omission of words, 'and shall not be bound by technical rules of evidence,' from Article V. Despatch follows by mail."

—GIROUARD.

21171

No. 35.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 12 July, 1910.)

SIR, Foreign Office, July 11th, 1910.

WITH reference to your letter of July 8th (20811),\* I am directed by Secretary Sir E. Grey to transmit to you herewith copy of a telegram from His Majesty's Ambassador at Washington respecting the Pecuniary Claims Convention with the United States.

In accordance with the arrangements made with your Department, the Assistant Legal Adviser to the Foreign Office will proceed to The Hague to-night, and will to-morrow discuss with the Representatives of Canada, Newfoundland, and the United States the amendments to the draft Convention proposed by His Majesty's Government

I am, &c.,  
F. A. CAMPBELL.

Enclosure 1 in No. 35.

TELEGRAM to Mr. BRYCE, Washington. Foreign Office, No. 87, dated July 8th, 1910.

Your telegram, No. 37. (Pecuniary Claims Convention.) It is essential that the assent of Newfoundland should be obtained to Convention. Please, therefore, send

\* Not printed.



at once to Newfoundland copy of your despatch, No. 109a, with amendment to Article V. required by Canada. Mr. Hurst is proceeding to The Hague probably next Monday to discuss Convention with Sir E. Morris and will ask him, if he accepts it, to telegraph to his Government accordingly. Mr. Hurst will also discuss with Newcombe, Morris, and Anderson amendments in drafting desired by His Majesty's Government with a view to securing their support.

Should strong objections be raised to them we will not press them as we do not desire to endanger the Convention. If, however, they are accepted at The Hague, I will telegraph them to you in order that you may endeavour to get the State Department to agree to them.

Enclosure 2 in No. 35.

Mr. BRYCE to Sir EDWARD GREY.

(Received July 10, 11 a.m.)

(Unnumbered.) R.

Dublin, July 10, 1910.

Your telegram, No. 87 (Claims Convention).

I have communicated to-day despatch therein referred to to Newfoundland, with draft agreement and schedule. Explanatory memoranda not sent on the grounds of their highly-confidential nature and as unnecessary for Newfoundland. They could be shown to the Prime Minister of Newfoundland at The Hague by Mr. Hurst.

I have told Newfoundland that her wishes respecting her claims are borne in mind, and that the schedule is altogether provisional, present agreement covering only general terms and method of arbitration. I called attention to the omission of words in Article V., and stated that the wording of the amendments will be discussed with the Prime Minister of Newfoundland.

22526

No. 36.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 23 July, 1910.)

[Answered by No. 40.]

SIR,

Foreign Office, July 22nd, 1910.

WITH reference to my letter of the 11th instant,\* I am directed by Secretary Sir E. Grey to transmit to you herewith a copy of a report by the Assistant Legal Adviser to this Office on the result of his discussions at the Hague with the Representatives of Canada, Newfoundland, and the United States respecting the Pecuniary Claims Convention.

The Secretary of State for the Colonies is already aware that His Majesty's Ambassador at Washington considers that any delay in the negotiations might prove fatal to the conclusion of this Convention, to which Sir E. Grey attaches great importance, and his Lordship will observe that the amendments proposed by His Majesty's Government have now been accepted by the representatives of the United States Government and of the two Colonial Governments concerned.

In view of the steps taken by the Prime Minister of Newfoundland there seems to be no reason to suppose that there will be any delay in the receipt of the formal concurrence of the Government of that Colony. In the case of Canada, however, it seems probable that some time must elapse before the necessary minute of the Privy Council can be prepared.

Sir E. Grey, therefore, proposes, with the concurrence of the Secretary of State for the Colonies, to instruct His Majesty's Ambassador at Washington to present to the State Department the text of the Convention as now amended, and, if it is accepted, to sign the Convention without awaiting the formal consent of the Canadian Government.

\* No. 35.

A draft of the telegraphic instructions which Sir E. Grey proposes in that case to address to Mr. Bryce is enclosed herewith for the concurrence of the Secretary of State for the Colonies.

Should his Lordship approve the course suggested above, Sir E. Grey would be obliged if he would telegraph the text of the amendments to both the Colonial Governments requesting the latter to telegraph their formal concurrence simultaneously to Mr. Bryce and to His Majesty's Government with the least possible delay, but intimating, in the case of Canada, that in view of the concurrence of both Messrs. Aylesworth and Newcombe in the amendments and of the importance of concluding the Convention with the least possible delay Mr. Bryce has been authorised to negotiate the amendments with the State Department forthwith.

I am, &c.,

F. A. CAMPBELL.

Enclosure 1 in No. 36.

Foreign Office, July 21st, 1910.

SIR,

I HAVE the honour to inform you that in accordance with your instructions I proceeded to the Hague on Monday, July 11th, in order to see whether the Representatives of Canada, Newfoundland, and the United States, who were present at the Hague, would be prepared to support the amendments you desired to introduce in the draft of the Pecuniary Claims Convention which had been put forward by the State Department at Washington in substitution for the former draft.

Sir George Buchanan had, before I arrived, made arrangements for me to see Mr. Aylesworth, the Canadian Minister of Justice, Sir Edward Morris, the Prime Minister of Newfoundland, and Mr. Chandler Anderson, the United States Agent on the North Atlantic Fisheries Arbitration.

My first interview was with Sir Edward Morris. The draft Convention had not been communicated to the Newfoundland Government by the Embassy at Washington, and, therefore, the Prime Minister was not aware that the old draft had been superseded. I explained to him the reasons which had led to the abandonment of the earlier draft as given in Mr. Bryce's No. 109A, of May 6th, and gave him a printed copy of that despatch with all the enclosures. I also told him that you had instructed Mr. Bryce to send a copy of the despatch with the draft Convention annexed to St. John's, as you were not prepared to authorise the signature of the Convention until you had made sure that its terms would not be objected to by Newfoundland. The fact that authority to sign the Convention had previously been given to Mr. Bryce I explained as being due to the great desire on both sides at Washington that the agreement should be signed before Congress rose and the officials of the Executive Government left Washington for the summer, and also to the fact that you presumed that as it was known that Mr. Bryce had been in communication with Ottawa, he had taken steps to secure the concurrence of both the Dominions. The Convention had not, however, been signed, and would not now be signed until he (Sir E. Morris) had expressed his acquiescence in its terms. At Sir Edward Morris's request I obtained for him from the Foreign Office a copy of the 1909 draft of the Convention in order that he might compare its terms with those of the new draft.

My next interview was with Mr. Aylesworth and Sir Edward Morris together in order to show them the text of the proposed amendments, and to explain to them their object. I gave them both copies of the amendments, and neither offered objections to any of them. I informed Mr. Aylesworth that before leaving London I had seen Mr. Newcombe, the Canadian Deputy Minister of Justice, and had gone carefully through the amendments with him, and that Mr. Newcombe had asked me to tell you that he considered all the amendments you desired were improvements, which it would be an advantage to obtain.

On the following morning I saw Mr. Anderson, and in the same way showed him the text of the amendments, and explained their object. Mr. Anderson said he felt some reluctance in dealing with the matter at all, as he had no authority from the State Department to do so, but as he was also of opinion that your amendments were an improvement to the text he would write privately to one of the officials of the State Department sending a copy of the amendments, and endeavouring to pave the way for their acceptance. He suggested that Mr. Bryce should



communicate the amendments to the State Department, and added that he thought it not improbable that the amendments would either be accepted outright, or if not, that they would be referred to him at the Hague, and that he would be given authority to conclude the matter. He thought that no harm would result from the short delay which this course of procedure would entail. The only amendment about which he expressed any doubt was the second, the omission from the preamble of the words "involving questions of a legal nature or relating to the interpretation of treaties," as he said that he thought that the words might have been introduced with some special object, but he was unable to remember for the moment whether this was so. Mr. Anderson subsequently informed me that he had written and sent the text of the amendments to the State Department, and asked for another copy to keep.

As my interview with Mr. Anderson had been so satisfactory, I endeavoured again to see both Mr. Aylesworth and Sir E. Morris as I was anxious to obtain from them a definite assurance that if at any time you felt that the moment had come when it was necessary for the Convention to be signed, though the formal concurrence of their Governments had not been expressed at Ottawa and St. John's respectively, you could authorise its signature feeling confident that such formal concurrence would be forthcoming later. I was particularly anxious to obtain this assurance in the case of Canada, because Mr. Aylesworth had explained to me that Sir W. Laurier had started on a long trip to the Pacific Coast, and that there was no Minister left at Ottawa who would deal with the subject.

My second visit to Mr. Aylesworth was quite satisfactory, and he gave me the assurance I desired without difficulty. Unfortunately, however, just before leaving the Hague, I received a message that he was not quite satisfied as to the wording of the amendment with regard to the concurrence of the self-governing Dominions as to the scheduling of claims affecting their interests. Subsequent correspondence has, however, removed Mr. Aylesworth's doubts with regard to this point. It will be seen that Mr. Aylesworth now makes his support conditional upon obtaining the last amendment rendering the *schedules* binding only when confirmed by exchange of notes. It would be possible, however, to achieve the same result in another way if it became necessary to sign the Convention at once. Notes could be exchanged at the time of signature declaring that Article 10 of the Convention was introduced to apply not only to the agreement, but also to any schedules thereunder.

Sir Edward Morris was indisposed during the last days of my stay at the Hague. I was, therefore, unable to see him, but he has now written stating that he is satisfied as to the draft Convention, and approving the amendments. I would draw your attention to the reservation he makes as to the schedules.

The letters which have passed between Mr. Aylesworth, Sir Edward Morris, Mr. Anderson, and myself are enclosed, together with a copy of the Convention\* showing the amendments, with an explanatory memorandum attached.

I am, &c.,  
C. J. B. HURST.

The Right Hon.

Sir Edward Grey, Bart., M.P.,  
&c., &c., &c.

DEAR MR. HURST,

Hotel Du Vieux Doelen, La Haye, July 14th, 1910.

I HOPED to have been able to see you in person to thank you for the papers you so kindly forwarded me, but owing to the attentions of an old enemy—the liver—I have been confined to my room the past two days, and will not have the pleasure of meeting you and Mrs. Hurst at dinner to-night. I have handed the papers (confidentially of course) to our Attorney-General, who is here with me on the arbitration, to look over them, and I shall send you a reply to London. I would have preferred the old form of agreement proposed, as under it we in Newfoundland at least knew exactly the outside figure of the pecuniary claim which the United

States contemplated making against us. I shall, however, do everything possible to facilitate the signing of the agreement once we agree as to form.

Hoping you may have a pleasant crossing to-night,

Yours faithfully,  
E. P. MORRIS.

DEAR MR. AYLESWORTH,

Foreign Office, July 15th, 1910.

I HASTENED round to your office in the Plein last evening when I heard that you had been asking Mr. Young whether he could tell you where I was, in the hope that I might be able to see you, but you had already left, and it was so late that it was impossible for me to come down to Scheveningen.

I gathered from him that you were not altogether easy in your mind as to the amendment which it was proposed to make at the end of the first paragraph of Article 1. You will remember that the old wording was:—

"... schedules to be agreed upon on the part of the United States Government . . . and on the part of His Majesty's Government with the concurrence of the self-governing Dominions of the Empire as to the submission of claims affecting their interests."

and we proposed to substitute the words:—

"His Majesty's Government reserving the right before agreeing to the inclusion of any claim affecting the interests of a self-governing Dominion of the British Empire to obtain the concurrence thereto of the Government of that Dominion."

This formula is taken from Article 2 of the Arbitration Agreement of 1908 between Great Britain and the United States of America which provided, with regard to the special agreement or "compromis" that was to be concluded in the case of an arbitration between the two Powers under that agreement, that on the part of the United States of America the special agreement was to be made by and with the advice of the Senate "His Majesty's Government reserving the right before concluding a special agreement in any matter affecting the interests of a self-governing Dominion of the British Empire to obtain the concurrence therein of the Government of that Dominion."

You will remember that one of the objects kept in view in framing the new draft of the Claims Convention was to link it up as closely as possible with the General Arbitration Convention of 1907 so that the benefit might be obtained of all the machinery and the procedure applicable to arbitrations under that Convention; and the schedules of claims to be negotiated under the new draft Convention in great measure take the place of the "special agreements" under the 1908 Agreement, so that the language of the self-governing Dominion clause of that Agreement is very applicable.

I have not, of course, heard the exact nature of your objection or doubt as to the amendment, but I hope it is not that you think it would be less favourable to your Government; we are, of course, already pledged up to the hilt not to do anything in a case of this kind without the concurrence of the Government of the Dominion, and as between the Mother Country and the Dominion it is upon this understanding that matters rest, and not upon the wording of the article.

I admit I am not quite clear whether the wording as it originally stood means exactly the same as the wording we desire to substitute, for it is a little difficult to say exactly what the old sentence did mean, but if it meant more than the new phrase means, it seems to me that it would have the effect of entitling the United States Government, when the Commission was dealing with any Dominion claim, to require formal proof that the Dominion Government had consented to the inclusion of the claim in the schedule. I feel sure you will agree with me that any such result would be unfortunate; the question whether or not a Dominion claim is to be included is an internal affair of the Empire; it has nothing to do with the other party to the arbitration.

I may, of course, be quite mistaken as to the reason of your doubt about this amendment, and if you would like to discuss the matter further I can easily return to the Hague for the purpose. Meantime I am holding back my report to Sir Edward Grey on the result of my visit to the Hague, as I should like to be able to tell him that you see no objection to the proposed amendments, and that you think

\* Not reprinted; the Convention is printed in No. 22 and amendments made are shown in No. 38.



that, if it becomes necessary to do so, the Convention, as amended, might safely be signed in advance of a Minute of Council in the expectation that concurrence would be expressed subsequently.

Yours, &c.,  
C. J. B. HURST.

Foreign Office, S.W.,  
July 15th, 1910.

DEAR SIR EDWARD MORRIS,

I WAS so sorry that you were after all unable to be present at your dinner party last night, as I should have liked to have discussed further with you the draft Claims Convention; had I known earlier that you would have been able to see me in your room, I should certainly have come.

Newfoundland will, I am confident, not be prejudiced by the new form of agreement proposed. The limitation of the total amount of the claim of the United States of America against you can be inserted without difficulty in the Schedule, and, as I explained, the Schedule is not at present to be regarded as in its final form, nor is it to be signed at the same time as the agreement. It was only annexed to the papers I gave you in order to indicate what was proposed. You may be quite sure that Sir Edward Grey would not ask you to agree to the new draft of the Convention if he thought that the interests of the Dominion would be prejudiced thereby. It is no use, however, our hankering after the old form of agreement, because that was entirely thrown overboard by the State Department at Washington, who would have no more to do with it.

I hope you have now quite recovered from your indisposition. I was particularly sorry the attack came on during my short visit to the Hague, as I had hoped to have discussed the Convention more thoroughly with you and your Attorney-General, and to have come away with everything fixed up. I mean I had hoped that you would have felt able to say that, if it became necessary, you thought the Convention might safely be signed without awaiting for the *formal* concurrence of your Government. I could, if necessary, return to the Hague to discuss with you any points about which you feel in doubt.

Very sincerely yours,  
C. J. B. HURST.

The Hon. Sir E. P. Morris.

North Atlantic Coast Fisheries Arbitration,

DEAR MR. HURST,

At the Hague, July 15th, 1910.

ON reading the print of the suggested changes in the proposed Pecuniary Claims Agreement which you left with me yesterday I find one that I do not like. It is that which relates to the concurrence of the self-governing Dominion interested.

All that is provided—if the suggested change is adopted—would be that His Majesty's Government "reserves the right" to obtain this concurrence. This language seems to imply that His Majesty's Government might or might not see fit to ask for such concurrence. For myself I should feel no alarm—being confident such concurrence would in practice be invariably asked before any schedule was agreed to—but I am afraid there are people in Canada who would be frightened if the language above quoted is used, and I would, therefore, suggest the following, which in form corresponds with the provision as to the United States Senate:—

"And on the part of His Majesty's Government, in the case of any claim affecting the interests of a self-governing Dominion of the British Empire, with the concurrence of the Government of that Dominion."

Trusting you will agree in thinking this language preferable,

Cecil Hurst, Esq.,  
Foreign Office, London.

I am, &c.,  
A. B. AYLESWORTH.

Hotel Du Vieux Doelen, La Haye,  
July 16th, 1910.

DEAR MR. HURST,

THANKS for your communication of July 15th. It was a great disappointment to me that I was unable to meet you before you left. I am quite satisfied, as you

say, that Newfoundland will not be prejudiced by the new form of agreement proposed. I further note that the limitation of the total amount of the claim of the United States of America against Newfoundland can be inserted without difficulty in the schedule. You will remember in the old agreement the items were inserted and the amounts limiting the total claim against us to be arbitrated on in the neighbourhood of \$30,000.

In any case, I should not have cared to have assented without the formal concurrence of the Governor in Council in Newfoundland, but this can quite easily be obtained.

I have a cable this morning from the Colonial Secretary at St. John's, Newfoundland, as follows:—

"Ambassador Bryce forwards draft agreement settlement pecuniary claims. Imperial and Dominion Governments have approved draft subject omission following words in Article 5; *begin*: 'and they shall not be bound by technical rules of evidence'; and possibly subject also certain minor amendments in words which they will discuss with you at Hague. Shall we approve present draft?—COLONIAL SECRETARY."

I am replying to this to say that the Foreign Office will cable them amended draft agreement, and that I and the Attorney-General here approve and recommend their formal approval.

We make this recommendation with the clear understanding, of course, that the concurrence of Newfoundland will be had before any Schedule will be agreed upon or presented—in other words, the Schedule will form no part of the agreement. Further, I should like to make it clear that we do not accept Clause 6 of the proposed Schedule—in other words, it might be better for Newfoundland to forgo entirely their claim rather than give the United States the right to make a similar one, but all discussion of possible claims under the Treaty of 1818, as interpreted by the Award of the Tribunal now sitting, must stand, of course, until after the publication of their Award. After the award is published Newfoundland will then be in a position to formulate their claim should we win on question 6; failing to win on question 6, we may have no claim to make against the United States, but what is really important for Newfoundland, and what we are interested in, is to prevent any further claim being made other than that the particulars of which were given us by the United States under the old form of agreement.

Subject to the foregoing, all that will be necessary is for you to cable out full text of amended agreement, and say that I have agreed, and to cable your formal approval direct.

Yours faithfully,  
E. P. MORRIS.

C. J. B. Hurst, Esq.,  
Foreign Office, London.

North Atlantic Coast Fisheries Arbitration at the Hague,  
Agency of the United States,

DEAR MR. HURST,

Hotel Des Indes, July 18th, 1910.

I RECEIVED yesterday your letter of the 16th instant, with the enclosures mentioned therein relating to the pending claims agreement between Great Britain and the United States, and I am writing to-day to the Department of State enclosing a copy of the amended draft and explaining the situation.

You will, of course, understand that my connection with the matter at present is entirely informal and unofficial, for, as stated at our conference, I am without authority to act for the Department. It is necessary, therefore, that the questions raised be taken up through the regular diplomatic channels in due course in accordance with our understanding.

I expect to be in London for a few days after we finish our proceedings here, and if then or meanwhile the Department of State should wish to have me take the matter up, it will give me much pleasure to communicate with you.

Cecil Hurst, Esq.,  
Foreign Office, London.

Yours very faithfully,  
CHANDLER P. ANDERSON.



DEAR MR. ANDERSON,

Foreign Office, July 19th, 1910.

MANY thanks for your letter of the 18th. I quite understood that you have no formal connection at present with the questions you were so good as to discuss with me, and I have made this quite clear in my report as to the result of my visit to the Hague.

Very sincerely yours,  
C. J. B. HURST.

DEAR SIR EDWARD MORRIS,

Foreign Office, July 19th, 1910.

I AM much obliged to you for your letter intimating that you and your Attorney-General feel able to support the new draft of the Pecuniary Claims Convention, and I am reporting to Sir Edward Grey accordingly.

I also note the reservations you make with regard to the schedules, which will be carefully noted.

Some days will probably elapse before the amendments are cabled out, but the short delay will not matter.

I hope you have now quite recovered from your recent indisposition.

Believe me, &c.,  
C. J. B. HURST.

North Atlantic Fisheries Arbitration at the Hague,

20th July, 1910.

DEAR MR. HURST,

I DULY received your letters of the 15th and 16th instant, with reference to the suggested amendments in the wording of the proposed Pecuniary Claims Agreement, and I am greatly obliged to you for the trouble you have taken in writing to me so fully and sending me the explanatory enclosures. Referring to my letter of 15th instant, I must admit that I was not alive to the fact that the language of your suggestion No. 5 was the wording of the Arbitration Agreement of 1908. That circumstance quite takes the wind out of my sails, and all I can say now is that after fully considering the whole matter I would still prefer the wording contained in my letter of the 15th instant, but that I will be content with whatever formula the Foreign Office may think it advisable to adopt. My only fear was that the phraseology you suggest might cause apprehension to either some good Canadians or other loyal subjects elsewhere, and in that fear I thought it would be better to depart as little as possible from the language of the draft as submitted by the Embassy.

But if your amendment No. 14 is adopted (which, as you know, I think very important), and the words (No. 11) omitted, to which omission also I attach great importance, I am prepared to support the proposed agreement either with or without the remaining amendments, and I can, I think, take the responsibility of saying that no objection will come from any of my colleagues in the Canadian Government.

C. J. B. Hurst, Esq., C.B.,  
Foreign Office, London.

Yours faithfully,  
A. B. AYLESWORTH.

Enclosure 2 in No. 36.

DRAFT OF PROPOSED TELEGRAM TO MR. BRYCE.

Text of Pecuniary Claims Convention showing desired amendments sent to you by post in private letter of July 16th.

These amendments have now all been accepted by Sir E. Morris and by Messrs. Newcombe and Aylesworth, and Mr. Anderson has, it is understood, forwarded them to the State Department privately, expressing himself favourably in regard to them.

In view of concurrence of Representative of Canada, I do not consider it necessary to wait for the formal assent of that Government, and as soon as formal concurrence of Governor of Newfoundland reaches you I authorise you to communicate the amendments to the State Department at once, and to endeavour to obtain their assent to them.

Aylesworth's consent is conditional upon the omission of words "and shall not be bound by technical rules of evidence" in Article V., and addition of words "and also any schedules agreed thereunder" in Article X.

Full text of the amendments is being telegraphed by the Colonial Office to Canada and Newfoundland with an intimation to Canada that in view of the importance of avoiding any further delay and of the fact that the amendments have been accepted by their Representatives over here, you have been authorised to commence negotiate, and sign Convention, before their formal assent has been received.

23136

No. 37.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 28 July, 1910.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—Mr. Bryce, No. 156, July 7/10: Pecuniary Claims Convention.

Foreign Office,  
July 27, 1910.

Enclosure in No. 37.

(No. 156.)

SIR,

British Embassy, Dublin, N.H., July 7, 1910.

I HAVE the honour to acknowledge the receipt of your despatch, No. 198, of June 23rd, received here to-day, which relates to the Pecuniary Claims Agreement, and in which is enclosed a copy of the answer made in the House of Commons on the subject on June 20th.

When I received your authorisation to sign the Agreement I was awaiting the reply of the Dominion Government to a despatch addressed to them on June 18th, in which a further expression of their views had been requested, and I forbore to sign till that reply had been received. It did not reach me till yesterday, and I then apprised you by cable of its receipt (telegram, No. 37, of June 6th).

It was not contemplated when the Agreement was being negotiated that it should go before the Senate of the United States until the schedules of the claims to be submitted to arbitration had been added, this stage of the negotiations being reserved for further discussion, and nothing would have been gained by sending it to the Senate, because they would have refused to take action until the schedule of claims had been added. The object of immediate signature was to have the two Governments committed not only to the principle of arbitrating pecuniary claims, which His Majesty's Government had long desired to apply, and to the general rules which were to govern this particular arbitration which had been so long on the anvil, but also to have this object secured, as far as the Governments were concerned, before the delivery of the Fisheries Award, which it was feared might introduce fresh complications. The rules and methods of arbitrating having been settled, a long step forward would have been taken towards the settlement of the whole matter, and the experience this Embassy has had of the difficulties caused by changes in the staff of the State Department made it seem especially desirable to record and seal the results so far arrived at.

The Senate has now adjourned.

There was never any question between the State Department and the Embassy as to the publication of this Agreement in its present form, because, for one among several reasons, treaties never are published, and could not properly be published, by the United States Government until they go before the Senate. Whether the Senate would consent to publication before a treaty has been received and discussed by them is very doubtful, but as the question has not arisen with regard to this particular treaty, I have not communicated with the State Department on the subject, though I can, of course, do so whenever the treaty goes to the Senate. In the case of the Boundary Waters Treaty, to which your telegram of February



10th, 1909, and mine of February 21st, 1909, referred, the Treaty was never published by the United States Government, and the Canadian newspapers were in error when they said it had been. What happened was that the members of the Senate talked to reporters, as they usually do, and so parts of the Treaty got into the Press. I discussed the matter informally with the State Department, but they (as I expected) declared themselves unable to prevent Senators from talking. The fault lies not with them but with the Senate, and the only remedy would appear to be that His Majesty's Government should itself, if it sees any advantage in doing so, allow the terms of a treaty to become known, having told the United States that it will do so. This, however, would be at variance with British practice, and has not been usual in Canada. I enclose copy of a confidential despatch bearing on the matter which I addressed to the Governor-General on April 15th, 1910, inviting the views of the Dominion Government on the subject, which it seemed desirable to have before opening the subject formally with the United States Government. These views have not yet been communicated to me.

Reverting to the situation of the present Agreement, I find myself to some extent in the dark. Canada having yesterday given her consent to the terms of the agreement subject to the omission of the words "and shall not be bound by technical rules of evidence" from Article V., I should naturally have forthwith asked the United States Government to agree to the omission of the words in Article V., and on their agreeing to this, which I have reason to believe they will do, should have proceeded to sign the Agreement in pursuance of your authorisation conveyed in your telegram, No. 79, of June 9th. Having regard, however, to your telegrams, Nos. 84 and 85, of the 27th and 29th June respectively, I am forbearing to do so until I hear further from you. I do not know what may have passed between you and the Colonial Office and the Dominion Government, nor am I informed as to the nature and terms of the wording amendments mentioned in your telegram, No. 85. I do not yet know how much importance you attach to them; but if they are merely matters of wording, it deserves to be considered whether it is worth while at this stage to throw the whole agreement back into the melting pot, from which there would be small hope of its emerging before the delivery of the Fisheries Award. I may observe in this connection that the answer in the House of Commons that the signature of the Agreement had been authorised has been widely reported in the American Press, and that the Canadian Ministers are now all scattering or scattered, so that the difficulty of getting replies from Canada is exceptionally great, and will continue so for some months.

I have, &c.,  
JAMES BRYCE.

The Right Honourable  
Sir Edward Grey, Bart., M.P.,  
&c., &c., &c.

(Confidential. No. 52.)

MY LORD, British Embassy, Washington, April 15, 1910.  
Some little time ago I was requested by His Majesty's Principal Secretary of State for Foreign Affairs to raise with the United States Government the question of making some arrangement under which treaties between His Majesty and the United States might be published immediately after signature and before ratification. Before formally opening this subject with the Government of the United States I should be glad to be informed of the views and wishes of your Ministers so far as the question affects Canada.

You are, of course, aware of the constitutional practice which prevails in the Parliament of the United Kingdom, and I gather that the practice has been the same in the Parliament of the Dominion. In the United States the same practice obtains as regards the House of Representatives, and as regards the Senate, whose participation in the concluding of treaties is prescribed by the Constitution, secrecy is supposed to be maintained until the treaty has been finally approved or rejected. The inconveniences of the present situation, which have led to the recent discussion of the matter, are due not to any official act on the part either of the Executive or the Senate of the United States, but to the fact that some individual members of the Senate allow themselves to reveal to persons representing the Press parts, or even the whole, of the terms of treaties which are before that body, so that these

instruments become unofficially, and indeed improperly, known to the public. It is probably impossible to prevent this practice, reprehensible though it may be; and the question, therefore, arises whether the existing position would be improved if draft treaties were published when laid before the Senate, in which case it would, of course, obviously be the right of the Government of the Dominion to publish them simultaneously in Canada.

Upon this point it is to be observed, first: that the United States Government may think that the Constitution contemplates the action of the Senate as being confidential, such having been the invariable practice since the establishment of the Federal Government, so far as the theory of the matter goes, however frequent the irregularities in its observance.

Secondly: that the discussion by the public Press of the terms of treaties laid before the Senate, which would doubtless, if they were published, be far more full and minute than it is under existing conditions, would make the action of that body even more uncertain, and more controlled by local or sectional influences, than it is now, by exposing it to all sorts of pressure which interested parties and newspapers would bring to bear on it.

Thirdly: that the constitutional position of Ministers in the Dominion Parliament might be rendered more difficult if they were, by the publication of draft treaties, virtually bound to admit Parliament to a participation in concluding international engagements. In the United States the participation of the Senate, hurtful to the conduct of affairs as it has often proved, may be justified on the ground that the President is not responsible to Congress. But in Canada, as in the United States, Ministers are responsible to Parliament, which, though it cannot under the present practice prevent them from concluding a treaty, exercises a control over them by its power of subsequent censure.

These and other considerations affecting the matter will, no doubt, be present to the minds of Your Excellency's advisers, and are now mentioned here only because, in case I should have to discuss the whole subject with the United States Government, it would be convenient that I should be in a position to convey not only the conclusion at which the Dominion Government arrives, but also the considerations which move it and the answers it would give to the objections or difficulties herein stated.

I have, &c.,  
JAMES BRYCE.

His Excellency the  
Right Honourable the Earl Grey, G.C.M.G., &c., &c., &c.,  
The Governor-General.

22526

No. 38.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Sent 7.30 p.m., 27th July, 1910.)

TELEGRAM.

[Answered by No. 45.]

Referring to your confidential despatch of 11th July,\* His Majesty's Government desire to make following amendments in draft agreement for settlement of pecuniary claims:—

Preamble: omit "Hague" and omit from "involving" to "treaties." These words suggest intention to limit operation of agreement to claims of the kinds mentioned. But some of the claims involve only questions of fact, and it would be unfortunate if tribunal declined to consider a scheduled claim on ground that it fell outside scope of agreement or if either side objected on the same ground to inclusion in a schedule of a claim presented by the other.

\* 22213: not printed.



Article I. to begin as follows:—" Either party may at any time within (blank) months from the date of the confirmation of this agreement present to the other party any claims which it desires to submit to arbitration. The claims so presented shall if agreed upon by both parties unless reserved as hereinafter provided be submitted to arbitration in accordance with the provisions of this agreement. They shall be grouped in one or more schedules which on the part of the United States shall be agreed on by and with the advice and consent of the Senate, His Majesty's Government reserving the right before agreeing to the inclusion of any claim affecting the interests of a self-governing Dominion of the British Empire to obtain the concurrence thereto of the Government of that Dominion." In last sentence and in Article II. omit "specifically." These amendments are mainly verbal. Formula with reference to concurrence of self-governing Dominions in that which appears in arbitration agreement of 1908 between United States and United Kingdom to which it is preferable to adhere.

Article III: for "Hague" read "said."

Article IV.: read "the proceedings shall be regulated by so much of Chapter IV. of the Convention and of Chapter III., excepting Articles 53 and 54, as the tribunal may consider to be applicable, and to be consistent with the provisions of this agreement."

The object is to remove apparent inconsistency between this Article and Article V. Part 4 of General Arbitration Convention of 1907 excludes oral arguments which Article V. allows to be used.

Article V.: sentence about duties of secretaries read "these secretaries shall act together as joint secretaries of the tribunal, and shall be subject to its direction." It is desired to make quite clear that secretaries are to be subject to tribunal, not Governments.

Omit "and shall not be bound by technical rules of evidence"; see your despatch above referred to.

Article IX, second sentence, read "the expenses of the tribunal shall be defrayed by a rateable deduction on the amount of the sums awarded by it at a rate of 5 per cent. on such sums or at such lower rate as may be agreed upon between the two Governments; the deficiency, if any, shall be defrayed in equal moieties by the two Governments." It would be difficult for either Government to question reasonableness or necessity of tribunal's expenses. Better to embody in separate agreement any arrangements or limitations Governments desire to make. Amendment also prevents deadlock in case Governments do not agree on a rate of deduction.

Article X.: insert after word "agreement" the words "and also any schedules agreed thereunder."

In original draft it was not clear whether Article X. applied only to agreement itself or to schedules also. Important that schedules themselves should also be confirmed by exchange of notes because lists of claims forming any particular schedule will be subject of bargaining, unless it were made clear that no schedule was binding until confirmed by exchange of notes. United States Senate having right to amend a treaty might strike out particular claims from schedule, but under wording of Article I. the other party would still be obliged to arbitrate remaining claims of schedule. Exchange of notes will not, of course, take place until after schedule has been agreed to by United States Senate.

Aylesworth and Newcombe have expressed approval of agreement amended as above. His Majesty's Government most anxious for formal approval of Dominion Government at earliest possible date. They have large number of British claims against United States, settlement of which will be facilitated by conclusion of this agreement. But if conclusion is postponed till after judgment in Hague arbitration, which will now be delivered very shortly, and that judgment is adverse to United States, probability is that whole matter will be prejudiced, and United States Government will be averse from concluding any arbitration agreements.

His Majesty's Government, therefore, earnestly hope that Dominion Government will agree with opinions of Aylesworth and Newcombe, and be good enough to signify formal approval within a week from this date, also informing British Ambassador, Washington.

His Majesty's Government confidently count on Dominion Government being willing to help them in this matter.—CREWE.

22526

No. 39.

NEWFOUNDLAND.

THE SECRETARY OF STATE to THE GOVERNOR.

(Sent 7.30 p.m., 27 July, 1910.)

TELEGRAM.

[Answered by No. 42.]

His Majesty's Government desire to make following amendments . . . as in No. 38 . . . agreed to by the United States Senate.

Sir E. Morris has seen draft and approves; see his telegraphic correspondence with Colonial Secretary.

His Majesty's Government are very anxious to conclude the Convention, and trust that formal expression of concurrence of Government of Newfoundland may be sent at once, and British Ambassador at Washington may be informed at the same time.—CREWE.

22526

No. 40.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 41.]

SIR,

Downing Street, 28 July, 1910.

I AM directed by the Earl of Crewe to acknowledge the receipt of your letter of the 22nd instant,\* enclosing Mr. Hurst's report of his discussions at the Hague with the representatives of Canada, Newfoundland, and the United States respecting the Pecuniary Claims Convention.

2. Lord Crewe notes that there is no reason to suppose that there will be any delay in the receipt of the formal concurrence of the Government of Newfoundland in the Convention as now amended, but that it is suggested that in view of the time which may elapse before the necessary minute of the Privy Council of Canada can be prepared the consent of the Dominion Government should be assumed on the strength of the opinions expressed to Mr. Hurst by Messrs. Aylesworth and Newcombe, and that Mr. Bryce should be authorised to negotiate the Convention with the State Department of the United States forthwith.

3. Lord Crewe much regrets that he cannot agree to this course, as he does not feel that it would be safe to assume the consent of the Government of the Dominion of Canada to the amendments which have been made until a formal and official expression of that consent has been received, and his Lordship attaches importance to consulting the Dominion Government fully at every stage.

4. Lord Crewe, however, quite appreciates the force of Sir E. Grey's view that there should be no avoidable delay in the conclusion of the Convention. He has accordingly despatched to the Dominion Government the telegram† of which a copy is enclosed setting forth the amendments which have been made and pressing the Dominion Government to signify their formal approval and inform the British Ambassador at Washington at the earliest possible moment.

5. A copy of a telegram‡ which has been sent to the Governor of Newfoundland is also enclosed.

I am, &c.,  
C. P. LUCAS.

23368

No. 41.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 30 July, 1910.)

[Answered by L.F. transmitting copies of Nos. 42 and 43.]

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of

\* No. 36.

† No. 38.

‡ No. 39.



State, transmits herewith copy of the following paper:—To Mr. Bryce, telegram, 88; July 29, 1910: Pecuniary Claims Convention.

Reference to previous letter: Colonial Office, July 28, 22526/10.\*

Foreign Office,  
July 29, 1910.

Enclosure in No. 41.

Telegram to Mr. BRYCE, Washington.

29 July, 1910. No. 88. Text of Pecuniary Claims Convention showing and explaining desired amendments sent to you by post in private letter dated July 16.

Proposed amendments have been telegraphed to Canada and Newfoundland on July 29, and both Governments have been requested to notify to you and to His Majesty's Government their formal approval as soon as possible.

As soon as such formal concurrence reaches you you should communicate the amendments to the State Department and endeavour to secure their assent to them.

23818

No. 42.

NEWFOUNDLAND.

THE ACTING GOVERNOR to THE SECRETARY OF STATE.

(Received 9.45 p.m., 2nd August, 1910.)

TELEGRAM.

[Copy to Foreign Office, 5 August, 1910. L.F. See No. 44.]

[Answered by No. 48.]

Your telegram of 27th July.† Pecuniary Claims Convention. My Ministers concur in amendments. His Majesty's Ambassador at Washington has been informed to this effect.—SHEA.

23818

No. 43.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Sent 12.10 p.m., 5th August, 1910.)

TELEGRAM.

[Copy to Foreign Office, 5 August, 1910. L.F. See No. 44.]

My telegram 27th July.‡ Pecuniary Claims. As no reply has been received from your Ministers and Aylesworth has approved proposed amendments and expressed opinion that no objection will be made by his colleagues, His Majesty's Ambassador at Washington is being instructed to invite United States Government to accept amendments which we desire. Matter is very pressing, as Bryce leaves for South America on 25th August, and it is desired that if possible the Convention shall be signed before that date.—CREWE.

24659

No. 44.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 10 August, 1910.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the under-mentioned papers: Mr. Bryce,

\* No. 40.

† No. 39.

‡ No. 38.

telegram 38, August 7\*: to Mr. Bryce, telegram 89, August 7\*: Pecuniary Claims Convention.

Reference to previous letter: Colonial Office, August 5, 23818/10.†

Foreign Office,  
August 9, 1910.

Enclosure 1 in No. 44.

Sir EDWARD GREY to Mr. BRYCE (Washington).

(No. 89.) R.

Foreign Office, August 7, 1910, 1.30 p.m.

Following sent to Ottawa from Secretary of State for the Colonies:—

"My telegram 27th July. Pecuniary claims. As no reply has been received from your Ministers, and Aylesworth has approved proposed amendments and expressed opinion that no objection will be made by his colleagues, His Majesty's Ambassador at Washington is being instructed to invite United States Government to accept amendments which we desire. Matter is very pressing, as Bryce leaves for South America on 25th August and it is desired that, if possible, the convention shall be signed before that date."

You are accordingly authorised to invite acceptance of the United States to amendments desired.

Enclosure 2 in No. 44.

Paraphrase of telegram from Mr. BRYCE, Dublin, N.H., to FOREIGN OFFICE, No. 38, dated August 7th, 1910.

I have received Newfoundland's assent to the proposed amendments in the Pecuniary Claims Convention. I have telegraphed to Canada and written asking for a reply as soon as possible, but have received no answer.

Could you ask the Colonial Office to cable in this sense, in view of the obvious urgency of the matter, and to point out that it would not seem necessary to await the re-assembling of Canadian Ministers, as no Canadian interests can possibly be prejudiced by the proposed amendments, which do not affect the substance of the agreement. Re-assembling of Canadian Ministers, who are now scattered, will not take place before September.

Private. Two months ago Sir W. Laurier wrote that in regard to this agreement he would be guided by the opinion of the Canadian Minister of Justice. If the amendments have been approved by the latter, Canada may be fairly asked to give her assent now rather than throw over the whole agreement. It is impossible to predict the consequences of abandoning present agreement.

Little time now remains for discussion with officials of State Department, who are away from Washington. I would, however, try to get one of them to meet me, and have already informed them that I may have communications to make.

24973

No. 45.

CANADA.

THE DEPUTY GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 6.5 p.m., 12th August, 1910.)

TELEGRAM.

[Copy to Foreign Office, 17 August, 1910. L.F. See No. 46.]

Your telegram of 27th July.‡ Pecuniary Claims: Canadian authorities concur in amendments proposed by His Majesty's Government. Bryce has been informed.—DEPUTY GOVERNOR-GENERAL.

\* (These two telegrams "crossed.")

† L.F. transmitting copies of Nos. 42 and 43.

‡ No. 38.



## FOREIGN OFFICE to COLONIAL OFFICE.

(Received 22 August, 1910.)

The Under Secretary of State for Foreign Affairs presents his compliments to the Under Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—Mr. Bryce, telegram 40: August 21/10: Signature of the Pecuniary Claims Convention.

Reference to previous letter: Colonial Office, August 17, 24973/10.\*  
Foreign Office,  
August 22, 1910.

Enclosure in No. 46.

MR. BRYCE to SIR EDWARD GREY.

(Received August 21, 11 a.m.)

(No. 40.)

Dublin, August 21, 1910.

Secretary of State sent me by messenger to-day copies of Claims Convention signed by him amended as desired by His Majesty's Government. United States Government having accepted all our amendments, and Canada and Newfoundland having concurred, I have understood from previous communications your wish to be that I should sign, and I have signed accordingly.

26053

No. 47.

## FOREIGN OFFICE to COLONIAL OFFICE.

(Received 23 August, 1910.)

[Answered by L.F. transmitting copy of No. 48.]

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—To Mr. Bryce, telegram 91: August 22/10: Pecuniary Claims Convention.

Reference to previous letter: Foreign Office, August 22/10.†  
Foreign Office,  
August 22, 1910.

Enclosure in No. 47.

TELEGRAM to MR. BRYCE, Dublin, N.H., August 22, 1910.

(No. 91.)

Your telegram, No. 40. I desire to congratulate you heartily on signature of Claims Convention.

The Convention, though signed, will require to be ratified; but we shall have to consider the question of how the British and Colonial claims are to be prepared, and that of the collection of evidence.

26058

No. 48.

## NEWFOUNDLAND.

THE SECRETARY OF STATE to THE GOVERNOR.

(Sent 2.15 p.m., 27 August, 1910.)

TELEGRAM.

[Copy to Foreign Office, 30 August, 1910. L.F.]

Your telegram of 2 August.‡ You will no doubt have learned from His Majesty's Ambassador at Washington that he signed on 21 August Pecuniary

\* L.F. transmitting copy of No. 45.

† No. 46.

‡ No. 42.

Claims Convention with United States Government, which has accepted all British amendments.—CREWE.

29421

No. 49.

MR. BRYCE (WASHINGTON) to SIR EDWARD GREY.

(Received in Foreign Office September 6, 1910.)

(No. 184.)

SIR,

Dublin, N.H., August 29, 1910.

WITH reference to my despatch, No. 181. of the 22nd August,\* I have the honour to transmit herewith the British copy of the special agreement for the submission to arbitration of pecuniary claims outstanding between Great Britain and the United States, as signed by the Secretary of State and myself, and dated the 18th August.

I have, &c.,  
JAMES BRYCE.

Enclosure in No. 49.

SPECIAL AGREEMENT for the submission to Arbitration of Pecuniary Claims outstanding between the United States and Great Britain.

Whereas the United States and Great Britain are signatories of the Convention of the 18th October, 1907, for the Pacific Settlement of International Disputes, and are desirous that certain pecuniary claims outstanding between them should be referred to arbitration, as recommended by Article 38 of that Convention:

Now, therefore, it is agreed that such claims as are contained in the schedules drawn up as hereinafter provided shall be referred to arbitration under Chapter IV. of the said Convention, and subject to the following provisions:—

Article 1. Either party may, at any time within four months from the date of the confirmation of this agreement, present to the other party any claims which it desires to submit to arbitration. The claims so presented shall, if agreed upon by both parties, unless reserved as hereinafter provided, be submitted to arbitration in accordance with the provisions of this agreement. They shall be grouped in one or more schedules which, on the part of the United States, shall be agreed on by and with the advice and consent of the Senate, His Majesty's Government reserving the right, before agreeing to the inclusion of any claim affecting the interests of a self-governing Dominion of the British Empire, to obtain the concurrence thereto of the Government of that Dominion.

Either party shall have the right to reserve for further examination any claims so presented for inclusion in the schedules; and any claims so reserved shall not be prejudiced or barred by reason of anything contained in this agreement.

Article 2. All claims outstanding between the two Governments at the date of signature of this agreement and originating in circumstances or transactions anterior to that date, whether submitted to arbitration or not, shall thereafter be considered as finally barred unless reserved by either party for further examination as provided in Article 1.

Article 3. The Arbitral Tribunal shall be constituted in accordance with Article 87 (Chapter IV.), and with Article 59 (Chapter III.) of the said Convention, which are as follows:—

"Article 87. Each of the parties in dispute appoints an arbitrator. The two arbitrators thus selected choose an umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the members of the Permanent Court, exclusive of the members appointed by either of the parties and not being nationals of either of them; which of the candidates thus proposed shall be the umpire is determined by lot.

"The umpire presides over the tribunal, which gives its decisions by a majority of votes."

\* Enclosure 1 in No. 50.



"Article 59. Should one of the arbitrators either die, retire, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him."

Article 4. The proceedings shall be regulated by so much of Chapter IV. of the Convention and of Chapter III., excepting Articles 53 and 54, as the tribunal may consider to be applicable, and to be consistent with the provisions of this Agreement.

Article 5. The tribunal is entitled, as provided in Article 74 (Chapter III.) of the Convention, to issue rules of procedure for the conduct of business, to decide the forms, order, and time in which each party must conclude its arguments, and to arrange all formalities required for dealing with the evidence.

The agents and counsel of the parties are authorised, as provided in Article 70 (Chapter III.), to present orally and in writing to the tribunal all the arguments they may consider expedient in support or in defence of each claim.

The tribunal shall keep record of the claims submitted, and the proceedings thereon, with the dates of such proceedings. Each Government may appoint a secretary. These secretaries shall act together as joint secretaries of the tribunal, and shall be subject to its direction. The tribunal may appoint and employ any other necessary officer or officers to assist it in the performance of its duties.

The tribunal shall decide all claims submitted upon such evidence or information as may be furnished by either Government.

The tribunal is authorised to administer oaths to witnesses and to take evidence on oath.

The proceedings shall be in English.

Article 6. The tribunal shall meet at Washington at a date to be hereafter fixed by the two Governments, and may fix the time and place of subsequent meetings as may be convenient, subject always to special direction of the two Governments.

Article 7. Each member of the tribunal, upon assuming the function of his office, shall make and subscribe a solemn declaration in writing that he will carefully examine and impartially decide, in accordance with treaty rights and with the principles of international law and of equity, all claims presented for decision, and such declaration shall be entered upon the record of the proceedings of the tribunal.

Article 8. All sums of money which may be awarded by the tribunal on account of any claim shall be paid by the one Government to the other, as the case may be, within eighteen months after the date of the final award without interest and without deduction, save as specified in the next article.

Article 9. Each Government shall bear its own expenses. The expenses of the tribunal shall be defrayed by a rateable deduction on the amount of the sums awarded by it, at a rate of 5 per cent. on such sums or at such lower rate as may be agreed upon between the two Governments; the deficiency, if any, shall be defrayed in equal moieties by the two Governments.

Article 10. The present agreement and also any schedules agreed thereunder shall be binding only when confirmed by the two Governments by an exchange of notes.

In witness whereof this agreement has been signed and sealed by His Britannic Majesty's Ambassador at Washington, the Right Honourable James Bryce, O.M., on behalf of Great Britain, and the Secretary of State of the United States, Philander C. Knox, on behalf of the United States.

Done in duplicate at the city of Washington this 18th day of August, one thousand nine hundred and ten.

JAMES BRYCE.  
PHILANDER C. KNOX.

28221

No. 50.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 12 September, 1910.)

[Answered by No. 53.]

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary

of State, transmits herewith copy of the under-mentioned papers respecting the Pecuniary Claims Convention.

Foreign Office,  
September 10, 1910.

## SCHEDULE OF ENCLOSURES.

- (1) From Mr. Bryce, 181, August 22/10.
- (2) To Mr. Bryce, telegram 93, September 1.
- (3) From Mr. Bryce, telegram 42, September 2.

Enclosure 1 in No. 50.

(No. 181.)

SIR,

British Embassy, Dublin, N.H., August 22nd, 1910.

IN confirmation of my telegram, No. 40, of the 20th instant, I have the honour to inform you that on that day I signed the Agreement for the submission to arbitration of pecuniary claims outstanding between the United States and Great Britain in the amended form in which you had returned it to me, the schedules being left over for further consideration and discussion.

On receipt of your telegram, No. 89, of the 7th instant, I communicated with Mr. Knox by letter, submitting to him the amendments desired by His Majesty's Government, and sending him a copy of the Agreement as amended, and a memorandum explaining the effect of the amendments and (in a private telegram) offering to meet him, if necessary, for discussion or signature. Copies of this letter and memorandum are enclosed herewith. At the same time I also wrote to Mr. Hoyt, of the State Department, in the same sense, sending to him also copies of Agreement as amended and memorandum. Mr. Hoyt at once replied as reported in my telegram No. 39 of the 12th instant, but Mr. Knox being absent on an automobile tour in Maine, my letter did not reach him until about a week later, when he informed me that he would consider the proposed amendments, and arrange for a conference with me if necessary.

On the morning of the 20th I received a telegram announcing that a member of the staff of the State Department would arrive in two hours bringing with him the Treaty signed by the Secretary of State embodying all the amendments desired by His Majesty's Government. He did, in fact, arrive at 11 a.m., bringing with him two copies of the Agreement signed by the Secretary of State.

Understanding that an authorisation from you to sign, if and when the amendments concurred in by Canada and Newfoundland were accepted by the United States Government, to have been implied in the communications I had lately received from you (as also that a previous authorisation had been given), and in view of the fact that the United States Government had acted very promptly in the matter, accepting your amendments without demur, and had so acted because they recognised the desirability of concluding this stage of the negotiations at the earliest possible moment, I did not feel justified in delaying signature until I could have further communicated with you to receive a second and more formal authorisation. I consequently signed the Agreement, copy of which will be forwarded to you as soon as I have received it back from the State Department.

On reading through the Agreement I found that the blank space in Article I., first line, left in the draft they submitted, and which had remained blank in the amended draft as returned by you to me, had been filled by the insertion of the word "four"—the sentence thus reading: "Either party may at any time within four months from the date, &c." I do not think that the number of months to be fixed had ever been discussed with the United States Government except informally, but in view of the fact that the point was not mentioned by you when the amendment of the Treaty was under consideration, and, moreover, that the precise time to be fixed was immaterial, seeing that the time would begin to run only from the moment of the confirmation of the Treaty by an exchange of notes, which confirmation could be delayed should the time appear too short—it did not appear to me that the matter was one of sufficient importance to render further delay necessary. So far as either party has any interest in the length of the term, it would appear to be rather to our



interest than to that of the United States that the time should not be longer than four months, as the State Department has so far shown itself to be less conversant with all their possible claims than we are with ours, and the longer the period the more chance there is that fresh claims on the United States side may be pressed upon them by agents for Americans who fancy they have claims. They themselves desire to avoid such pressure which would be more vexatious the longer the period.

The point regarding the schedules mentioned in your telegram of authorisation, No. 79, of 9th June, having been covered by the amendment made in Article X. did not require to be further specially dealt with.

The Right Honourable  
Sir Edward Grey, Bart., M.P.,  
&c., &c., &c.

I have, &c.,  
JAMES BRYCE.

DEAR MR. SECRETARY, British Embassy, Dublin, N.H., August 8th, 1910.

In a Note, No. 880, of May 9th last, Mr. Huntington Wilson was good enough to transmit to me, as the result of negotiations which were undertaken with a view to arriving at a basis for an agreement for the submission to arbitration of certain outstanding pecuniary claims between the United States and Great Britain, a draft of a proposed agreement for that purpose.

This draft has received the most careful consideration of His Majesty's Government, with the result that certain amendments, as shown in the enclosure to the note, presented themselves to His Majesty's Government as desirable. Most of these are verbal, suggested as tending to more perfect clearness, and none, it is believed, affects the substance of the Agreement or raises any new question affecting the real interests of either party.

I earnestly hope that when your Government shall have had time to study the matter carefully it will be equally of the opinion that the suggested amendments will conduce to the greater lucidity of the Agreement and to the more complete satisfaction of our two Governments in forming a basis for the settlement of these claims, which is so much to be desired on both sides.

I shall accordingly be extremely grateful if you can see your way to communicating to me at your earliest convenience your views on the question of the amended draft herewith submitted.

I append a copy of the draft Agreement showing the proposed amendments, and also a memorandum explaining the reasons that have led to their inclusion.

The Honourable  
P. C. Knox,  
Secretary of State.

I am, &c.,  
JAMES BRYCE.

(Confidential.)

MEMORANDUM respecting Amendments proposed by His Majesty's Government to the Draft "Agreement for the Submission of Pecuniary Claims Outstanding between the United States and Great Britain."

The amendments proposed by His Majesty's Government will be seen to possess nothing of a nature to change in any material manner the intentions or scope of the Agreement as drafted after the informal negotiations between His Majesty's Government and the Department of State in Washington during the past spring.

Their object is rather to elucidate certain points on which it was informally decided to agree, and where a careful study had detected any possibility of future misconception. Many of them, in fact, merely relate to questions of grammatical expression. To this category belong Nos. 4, 6, 7, 10, while No. 5 merely substitutes a formula which appears in the Arbitration Agreement of 1908 between the United States and Great Britain for the sentence as originally drafted, the alteration being one which does not affect the United States.

The other proposed amendments will be taken in order, according to the numbers marked in the margin.

No. 1. The omission of the word "Hague."

This amendment might almost fall under the category of amendments relating to grammatical expression. It is suggested on the ground that, in view of the number of conventions signed at the Hague, the actual word "Hague" does not tend to clearness, and that it is, therefore, better to give the full title, and that when the full title is inserted the word "Hague" becomes superfluous.

No. 2. The omission of the words "involving questions of a legal nature or relating to the interpretation of treaties."

This omission is recommended on the ground that these words as they stand might appear to suggest an intention on the part of the two Governments to limit the operation of the Agreement to claims of this nature. It is understood and believed that the intention of the two Governments has throughout been that all claims which are scheduled should be decided by the Tribunal, and as some of the claims—to the insertion of which no objection is anticipated on either side—involve only questions of fact, the retention of the words in question might (when a scheduled claim not strictly "involving questions of a legal nature or relation to the interpretation of treaties" came before the Tribunal), lead to the point being taken whether such claim was on these grounds outside the jurisdiction of the Tribunal. Such a contention would probably be overruled by the Tribunal, but it would seem better to avoid by the omission of the words the possibility of such an occurrence. The raising and arguing of the points might, in the case of persons not familiar with the intentions of the two Governments, conceivably lead to one of those misconceptions and misunderstandings the possibility of which it is eminently desirable to preclude.

The presence of these words in the draft is presumably owing to their presence in the Arbitration Agreement of 1908, but as nothing in the present Agreement makes it necessary to quote them therefrom, it is hoped that the greater fidelity to the expressed intentions of the two Governments which would ensue from their omission may be considered as a sufficient explanation of the view of His Majesty's Government that they had better be dropped from the text.

#### ARTICLE I.—AMENDMENT 3.

No. 3. The insertion of the words "to the other party" is merely to remove any uncertainty. The usual practice is that the claim is "presented" to the Tribunal, but it is fairly clear that in this case it was meant to be a formal presentation of the claim to the Government, so as to enable it to decide whether or not to exercise its right of reservation in accordance with the final paragraph of the article. The words "against the other" are superfluous; the preamble makes it clear that the Agreement relates only to claims between the two parties.

No. 4 has been referred to above. The change is suggested merely as tending to lucidity.

No. 5 has been referred to above.

The choice of the suggested formula is merely in order to reproduce that already employed in the Arbitration Agreement of 1908. Its meaning is now well understood, and it appears preferable to adhere to it rather than adopt a new phrase.

No. 6 has been referred to above. "Specifically" seems superfluous.

#### ARTICLE II.—AMENDMENT 7.

No. 7. See under Amendment 1.

#### ARTICLE IV.—AMENDMENT 8.

No. 8. The word "arbitral" is a term not familiar to lawyers in England or in America, but the point is of small consequence.

No. 9. The further amendments to this article have been introduced in view of Article V., which allows of oral arguments. Part LV. of the General Arbitration Convention of 1907 excludes oral arguments. The new form is therefore suggested as the better for the removal of this apparent inconsistency.

#### ARTICLE V.—AMENDMENT 10 (referred to above).

No. 10. This is meant to clear up a possible ambiguity, and show that the secretaries are to take directions from the Tribunal.



No. 11. It is suggested that these words are really needless, because the Tribunal will, of course, admit all such evidence as it thinks relevant and substantial, and that they might possibly be harmful as tending to lead parties interested to suppose that any kind of evidence, however unsubstantial or remote, might be adduced. It is, therefore, submitted that it is here safer to adhere to the language used in the former draft and omit these added words.

#### ARTICLE IX.—AMENDMENT 12.

No. 12. As it would obviously be difficult for either Government to question the reasonableness or the necessity of the expenses incurred by the Tribunal, it would seem better to omit the words "all reasonable and necessary joint," and if the Governments desire to impose any conditions or limitations, they might better do this in a separate agreement of a subsidiary character.

No. 13. The remaining alteration in this article has been suggested merely with the intention of preventing a possible deadlock in case the Governments do not agree on a rate of deduction.

#### ARTICLE X.—AMENDMENT 14.

No. 14. The insertion of the words "and also any schedules agreed thereunder."

It is suggested that it might conduce to more absolute clearness if the words "and also any schedules agreed thereunder" were inserted, because although the schedules are a necessary part of the Agreement when completed and perfected, and though it was contemplated in the negotiations that the notes should be exchanged after the schedules had been added, still the fact that in the earlier parts of the draft the Agreement is referred to as if it stood apart from the schedules might lead to the impression that it was here referred to in the same way. The proposed amendment may, therefore, serve to set out what was and is the undoubted intention of the parties.

British Embassy,  
Dublin, N.H.,  
August 7th, 1910.

Enclosure 2 in No. 50.

TELEGRAM to MR. BRYCE.

(Paraphrase.)

Foreign Office, September 1, 1910.

No. 93. Pecuniary Claims Convention.

Please send home as soon as possible signed copy of Agreement referred to in your despatch, No. 181, of 22nd August.

Enclosure 3 in No. 50.

TELEGRAM from MR. MITCHELL INNES, Dublin, New Hampshire.

No. 42. 2 September, 1910. Your telegram of September 1. Signed copy sent home last bag. Form that of Special Agreement.

28774

No. 51.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 17 September, 1910.)

[Answered by No. 53.]

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary

of State, transmits herewith copy of the following paper:—Mr. Bryce, (Washington), No. 182, August 25: Claims Convention with United States of America.

Foreign Office,  
September 16, 1910.

Enclosure in No. 51.

(No. 182.)

SIR,

British Embassy, Dublin, N.H., August 25, 1910.

I HAVE the honour to acknowledge your telegram, No. 91,\* and to thank you for the congratulations it conveyed on the signature of the Pecuniary Claims Agreement, the circumstances attending which have already been reported in my despatch, No. 181, of the 22nd instant. The settlement thus attained of the general terms of the agreement for arbitration of pecuniary claims does mark an advance towards a final adjustment which is valuable for the reasons mentioned in previous despatches, but a good deal remains to be done in the way of determining the claims to be inserted in the schedules and formulating the categories under which each claim is to be submitted.

The view of the United States Government, and that on which the negotiations have proceeded, is that the agreement in its present form ought not to go before the Senate until the first schedule has been settled, as it is apprehended that that body would not give its consent until satisfied that certain claims, which have long been matters of discussion, were included. It is, therefore, the more desirable that negotiations should be resumed early in the winter for the adjustment of the schedules, or at least of the first one. Confirmation by notes and ratification would, of course, follow after the approval of the Senate had been secured.

Regarding many of the claims on both sides an understanding had been arrived at, so that it will be possible, and is indeed, as observed in your telegram, now desirable, that steps should be taken on our part to investigate those claims the inclusion of which is practically certain, and to prepare the evidence needed to substantiate or oppose them, as the case may be; while, as respects those as to the inclusion of which there still remains a difference of opinion between the two Governments, it is no less desirable that we should proceed to consider which of them it is most desirable to continue to press for inclusion, or to resist the inclusion of, as the case may be. The United States Government were aware of the shadowy character of some of their claims, and seemed disposed not to press these for the first schedule, and to let at least some of them fall out before the time for closing all schedules is reached.

I have, &c.,

JAMES BRYCE.

29767

No. 52.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 28 September, 1910.)

[Answered by No. 57.]

SIR,

Foreign Office, September 27, 1910.

I AM directed by Secretary Sir E. Grey to call your attention to the following points, in connection with the preparation of British and United States claims which are to be submitted to arbitration under the Pecuniary Claims Convention recently signed with the United States.

The claims to be dealt with under the Convention fall, as you are aware, into three categories:—(a) Those by or against Canada; (b) those by or against Newfoundland; (c) those by or against the rest of the British Empire. Those in the last category will doubtless have to be handled entirely by His Majesty's Government. It is probable, however, that the two Dominions concerned may prefer to arrange for the arguing and presentation of the claims in the other two categories, and Sir E. Grey would be glad if the Earl of Crewe would ascertain the views of the Canadian and Newfoundland Governments on this point. As it will probably

\* Enclosure in No. 47.



be decided that the British Agent before the Arbitration Tribunal shall be appointed by His Majesty's Government for the whole work of the Commission, whether the claim dealt with be a colonial claim or not, I am to suggest that the Dominions should be consulted only as regards the preparation and arguing of the claims affecting them, leaving the question of the agent to be settled later.

The second point to which I am to call your attention concerns the "hypothetical" claim which the Newfoundland and Canadian Governments desired to put forward in respect of fishery privileges exercised by United States fishermen in excess of their treaty rights. In the case of Newfoundland this claim had special reference to question VI. in the Fisheries Arbitration Convention, which the Hague Tribunal has now decided in favour of the United States. In these circumstances I am to suggest that the two Dominions should be requested to state whether they still think it necessary, in the light of the Award, to put forward any hypothetical fishery claims against the United States.

I am, &c.,  
LOUIS MALLET.

28774

No. 53.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 54.]

SIR, Downing Street, 27 September, 1910.  
I AM directed by the Earl of Crewe to acknowledge the receipt of your letters of the 10th instant and the 16th instant,\* enclosing copies of correspondence with His Majesty's Ambassador at Washington relative to the Pecuniary Claims Convention with the United States, and to state that his Lordship presumes that Mr. Bryce has communicated with the Canadian Government in the sense of his despatch of the 25th of August.

I am to add that Lord Crewe awaits formal copies of the Convention, which he will communicate to all the self-governing Dominions and Colonies.

I am, &c.,  
G. V. FIDDES.

29918

No. 54.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 30 September, 1910.)

[Answered by No. 57.]

SIR, Foreign Office, 28th September, 1910.  
In reply to your letter, 28774, of the 27th instant,† I am directed by Secretary Sir E. Grey to transmit to you herewith twelve copies of the Agreement‡ with the United States Government for the submission to arbitration of outstanding pecuniary claims.

The Secretary of State for the Colonies will observe that all claims not presented within four months of the date of the confirmation of the Agreement are thereafter to be considered as finally barred. Sir E. Grey, therefore, desires to suggest, for his Lordship's consideration, that the various Colonial Governments should be asked to inform His Majesty's Government without delay of the existence of any claims by Colonial subjects against the United States Government which have not already been communicated to His Majesty's Government.

Sir E. Grey considers that it will be greatly to the advantage of His Majesty's Government that all the outstanding pecuniary claims shall be finally disposed of as soon as possible.

He therefore proposes that as far as possible every known claim on either side shall be included in the first schedule.

He is not aware whether Mr. Bryce communicated to the Canadian Government the substance of His Excellency's despatch of August 25th§ to which you refer.

\* Nos. 50 and 51. † No. 53. ‡ Enclosure in No. 49. § Enclosure in No. 51.

Seeing that in that despatch a re-opening of the process of bargaining over the schedules is contemplated, Sir E. Grey considers it unnecessary that its contents should now be communicated to the Canadian Government.

I am, &c.,  
LOUIS MALLET.

29918

No. 55.

THE SECRETARY OF STATE to THE GOVERNORS-GENERAL AND GOVERNOR.

[Answered by No. 64.]

(Australia.)  
(New Zealand.)  
(Union of South Africa.)  
(Confidential.)

MY LORD,

Downing Street, 10 October, 1910.

I HAVE the honour to transmit to [Your Excellency] [you], for the information of your Ministers, the accompanying copies of an Agreement\* with the United States of America for the submission to arbitration of pecuniary claims outstanding between the United States and Great Britain which was signed on the 18th of August.

2. Your Ministers will observe that His Majesty's Government have reserved the right, before agreeing to the inclusion in the schedules of any claim affecting the interests of the self-governing Dominions of the British Empire, to obtain the concurrence thereto of the Government of that Dominion.

3. Your Ministers will, no doubt, inform me whether there are any claims against the United States Government which they desire to bring to the attention of His Majesty's Government with a view to the consideration of the question whether they should be included in the schedules which will shortly be prepared. It will be observed from Articles 1 and 2 of the Agreement that any claim not presented within four months after the date of the confirmation of the Agreement will be finally barred, and His Majesty's Government desire, therefore, to include in the first schedule all claims which it is desired to press.

[4. To New Zealand only. I take this opportunity of observing, with reference to my confidential despatch of the 28th January last,† and previous correspondence relative to the Webster claim, that I have not yet received the statement by the Attorney-General of New Zealand referred to in your telegram of 24th January last.‡]

I have, &c.,  
CREWE.

29918

No. 56.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL OF CANADA AND THE GOVERNOR OF NEWFOUNDLAND.

[Answered by No. 65.]

(Confidential.)

MY LORD,

Downing Street, 10 October, 1910.

[Canada: With reference to Mr. Girouard's despatch, No. 369, of the 29th of August,§]

[Newfoundland: With reference to my telegram of the 27th of August,||]

I have the honour to transmit to [Your Excellency] [you], for the information of your Ministers, a copy of the special agreement\* for the submission to arbitration of pecuniary claims outstanding between Great Britain and the United States, as signed by the Secretary of State and His Excellency on the 18th of August.

2. I have no doubt that your Government are in communication with His Majesty's Ambassador in connection with the preparation of the Schedules to the

\* Enclosure in No. 49. † No. 2. ‡ No. 1. § 26896: not printed. || No. 48.



Special Agreement, and I presume that your Ministers will desire that the preparation and argument of the cases affecting [Canada] [Newfoundland] should be conducted by your Government.

3. Your Ministers will no doubt consider in drawing up the list of [Canadian] [Newfoundland] claims to be submitted whether it is desirable to include any hypothetical claim arising out of the fisheries question, in view of the terms of the Hagne Award of the 7th of September.

I have, &c.,  
CREWE.

29918

No. 57.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 58.]

SIR,

Downing Street, 10 October, 1910.

In reply to your letter of the 28th of September,\* I am directed by the Earl of Crewe to transmit to you, for the information of Secretary Sir E. Grey, copies of despatches† addressed to the Governors-General of Canada, the Commonwealth of Australia, and the Union of South Africa, and to the Governors of New Zealand and Newfoundland regarding the Agreement with the United States of America for the settlement of pecuniary claims. A separate letter will be addressed to you with regard to the case of the Crown Colonies and Protectorates.

2. With reference to your letter of the 27th of September,‡ I am to point out that if the Government of New Zealand so desire they must be permitted to prepare and present the case of the defence to the Webster claim, should that claim finally appear on the schedules.

I am, &c.,  
C. P. LUCAS.

32240

No. 58.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 21 October, 1910.)

[Answered by No. 59.]

SIR,

Foreign Office, October 20, 1910.

I AM directed by Secretary Sir E. Grey to acknowledge receipt of your letter, 29918 of the 10th instant,§ respecting the Pecuniary Claims Convention with the United States.

With regard to the question of the liability of the New Zealand Government in the event of an unfavourable award in the Webster claim, Sir E. Grey would be glad to learn whether the Secretary of State for the Colonies has received the written statement of the Attorney-General for New Zealand mentioned in the enclosure to your letter 2420 of January 28th last.||

Sir E. Grey observes that in Lord Crewe's despatches of the 10th instant† a suggestion is conveyed to the Governments of Canada and Newfoundland that they should communicate with His Majesty's Ambassador at Washington with regard to the preparation of the schedules.

You are aware that Sir E. Grey trusts that discussions with regard to the schedules may be reduced to a minimum, but should any negotiations with that object become necessary, Sir E. Grey would prefer that they should be conducted through His Majesty's Government rather than by means of direct communications between the Colonial Governments and His Majesty's Embassy.

He would therefore be obliged if the Colonial Governments could be informed that, while there is no objection to the exchange of informal communications with His Majesty's Embassy, the essential point is that they should send home the list of claims which they wish to put forward or to the arbitration of which they may object.

I am, &c.,  
LOUIS MALLET.

\* No. 54.

† Nos. 55 and 56.

‡ No. 52.

§ No. 57.

|| No. 3.

32240

No. 59.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 60.]

SIR,

Downing Street, 1 November, 1910.

I AM directed by the Earl of Crewe to acknowledge the receipt of your letter of the 20th of October\* on the subject of the Pecuniary Claims Convention with the United States of America.

2. In reply, I am to request you to inform Secretary Sir E. Grey that his Lordship quite agrees that in order that the Schedule should be drawn up it will be necessary for His Majesty's Government to have the full list of claims to be adduced by, or objected to by, the Governments of Canada and Newfoundland, but he thinks that these Governments might reasonably object to all the negotiations regarding the insertion of such claims in the schedule being conducted through this Department and the Foreign Office.

3. This course would inevitably cause delay and inconvenience, and, as Sir E. Grey is aware, in recent years the practice of conducting negotiations through His Majesty's Ambassador at Washington with the United States Government has been regularly adopted, and the satisfaction with which the practice has been viewed in Canada has undoubtedly greatly diminished the demand in Canada for the appointment of a representative of that Government on the staff of the Ambassador, a demand which it would be inconvenient for His Majesty's Government either to comply with or to refuse outright. Moreover, to revoke the consent to such negotiations given in Lord Crewe's despatch of the 10th October,† would be difficult and might even in some degree defeat the purpose of the Convention by causing Canada to raise objections to the submission to arbitration of, e.g., the claim regarding the seizure of the "Frederick Gerring."

4. It will, of course, be necessary that His Majesty's Ambassador should keep the Secretary of State for Foreign Affairs fully informed with regard to the claims to be urged by, or objected to by, the Governments of Canada or Newfoundland, but I am to suggest that if this is done Sir E. Grey will really be in as favourable a position for settling the final form of the Schedule as if the whole negotiations were conducted here.

5. With regard to the Webster claim, I am to refer to the despatch to New Zealand enclosed in the letter from this Office of 10th October.‡

I am, &c.,  
C. P. LUCAS.

35439

No. 60.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 19 November, 1910.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—To Mr. Mitchell Innes, No. 340, November 17: (Pecuniary Claims Convention).

Reference to previous letter: Colonial Office, November 1, 32240/10.§

Foreign Office,

November 18, 1910.

Enclosure in No. 60.

(No. 340.)

SIR,

Foreign Office, November 17, 1910.

IN connexion with the Agreement for the submission to arbitration of Pecuniary Claims outstanding between Great Britain and the United States, signed at

\* No. 58.

† No. 56.

‡ No. 57.

§ No. 59.



Washington on the 18th of August last, I have lately had under consideration the question of the appointment of the British arbitrator to serve on the tribunal.

The self-governing Dominions have, as you are aware, from time to time expressed the wish that arbitrators nominated by themselves should sit on the tribunal when the latter was dealing with the claims in which they were interested. The Convention itself contains no provision expressing recognition of this wish, but it is stated in Enclosure 4 in Mr. Bryce's despatch, No. 109A, of May 6th last,\* that the United States Government admit that the provision in Article 3 of the Convention for the replacing of an arbitrator who has retired will render it possible to appoint a Colonial arbitrator to the tribunal for claims in which that Colony is interested.

It is not clear to me how it is intended that this provision should operate, or whether it is contemplated that, if claims by the United Kingdom, Canada, and Newfoundland are included in the same schedule, the personnel of the tribunal should be constantly varied in order to ensure that a Canadian arbitrator should sit on the tribunal when a Canadian claim was under discussion, and a Newfoundland arbitrator in the case of a Newfoundland claim, and so on. Such a course would obviously be open to serious objection, but I should be glad if you would give me your views as to the arrangements which can be made for the arbitration of the various classes of claims, bearing in mind the desire of the self-governing Dominions that they should severally nominate the arbitrator to deal with the claims in which they are interested.

I understand further from Mr. Bryce's despatch, No. 182, of the 25th of August last,† that the United States Government are of opinion that the agreement in question should not go before the Senate until the first schedule has been settled "as it is apprehended that that body would not give its consent until satisfied that certain claims which have long been matters of discussion were included." According to Article 1, however, the claims can only be presented after the Convention has been confirmed, and they cannot be included in a schedule until they have been presented. It appears, therefore, that the Convention must be made operative before the first schedule can be agreed, while it cannot be made operative by confirmation until it has received the approval of the Senate.

I should be glad to receive your observations on this point also at an early date.

I am, &c.,

A. Mitchell Innes, Esq.,  
&c. &c. &c.

(For the Secretary of State),

38029

No. 61.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 13 December, 1910.)

[Answered by No. 63.]

SIR,

Foreign Office, December 12, 1910.

WITH reference to your letter, 32240/10, of the 1st ultimo, and to my letter of the 18th idem,‡ I am directed by Secretary Sir E. Grey to transmit to you herewith copy of a despatch from His Majesty's Chargé d'Affaires at Washington respecting the Pecuniary Claims Agreement with the United States, together with a copy of a telegram sent in reply to Mr. Mitchell Innes.

After careful consideration of Mr. Mitchell Innes's observations, Sir E. Grey is disposed to think that the difficulties of any arrangement under which the British Commissioner would vary in accordance with the part of the Empire by or against which a claim is being presented have not been duly appreciated at Washington.

Even when a claim is believed to be ready for submission to a Tribunal the experience of past Claims Commissions shows that delays frequently arise and adjournments are rendered necessary by the need for obtaining further evidence, or other cause. It is therefore most improbable that it would be possible for all the

\* Enclosure 1 in No. 22.

† Enclosure in No. 51.

‡ Nos. 59 and 60.

claims in one particular category to be taken and disposed of before those in another category are commenced without unduly prolonging the duration of the Commission.

Apart from the case of New Zealand, which is referred to in another part of this letter, the only Colonial Governments for whom there is any real need to provide for the appointment of commissioners to be nominated by themselves are Canada and Newfoundland.

The best solution of the difficulty would therefore appear to be to invite the Canadian Government to agree to the appointment of a Canadian judge of suitable standing as British Commissioner not only for the Canadian claims but also for the Imperial claims. It is possible that the Government of Newfoundland also would accept the Canadian judge as Commissioner for the claims against Newfoundland; especially as those claims must be decided in principle by the findings of the Hague Tribunal and the results of the Conference which is about to discuss the Colonial fishery legislation considered objectionable by the United States Government. Should the Newfoundland Government however not agree, it would be necessary for His Majesty's Government to arrange for the appointment of a Newfoundland Commissioner for the claims in question. This could be done by grouping the Newfoundland claims in a separate schedule and those claims would then have to be considered by the Tribunal separately from the others.

The Government of New Zealand is, so far as Sir E. Grey is aware, only concerned in the Webster claim.

In view of the contention which that Government has put forward that in the event of an unfavourable award being made in the Webster case any compensation awarded would fall to be paid by His Majesty's Government and not by the New Zealand Government, it is not likely that they will press to be allowed to appoint a New Zealand Commissioner, as to do so would be to admit that the claim was a New Zealand claim and not an Imperial claim. Sir E. Grey therefore does not consider that the appointment of a New Zealand Commissioner is a contingency which need be provided for at present.

As regards the composition of the schedule of claims Sir E. Grey is, as you are aware from my letter of September 28th last,\* anxious that every known claim on either side shall be included in the first schedule. The object of the present Convention is to remove so far as possible the potential causes of friction between the two countries which must remain so long as these claims are unsettled, and to attain this object it is necessary that the Convention should result in the elimination of every outstanding claim either by its submission to the Tribunal or by its being barred by non-presentation.

During the negotiations in connexion with the draft Claims Convention of 1909, under which the claims to be dealt with were appended to the Convention in a list, a considerable amount of bargaining took place in which one party agreed to the inclusion of a particular claim provided the other party agreed to the inclusion of another claim. The natural result of such a course is that, if one claim is objected to on one side, two claims will probably remain unsettled and be kept alive, contrary to the policy in pursuance of which the Convention has been arranged, namely, that of securing the final settlement of as many outstanding claims as possible.

With this view Sir E. Grey is preparing a list of all the claims by the British Empire against the United States; he proposes to eliminate from that list all claims that are obviously bad and to present the remainder to the United States Government, leaving it to that Government to object to any should they desire to do so.

Similarly, when the lists of United States claims are received, Sir E. Grey proposes that they should be carefully scrutinized and that objection to the inclusion of any of them should only be raised in cases where it is felt impossible to allow the claim to be fought out for some reason peculiar to the claim itself, as, for instance, because of the line already adopted in connexion with the similar claims either of some other foreign Power or of British subjects. Sir E. Grey desires especially to avoid any request to exclude a United States claim from the list on the sole ground that it is a bad claim, inasmuch as the effect of reserving a claim and refusing to allow it to go before the Commission would be to keep that claim alive and prevent its final disappearance.

Sir E. Grey proposes that the decision as to whether any United States claims

\* No. 54.



against His Majesty's Government should be reserved and thereby removed from the purview of the Commission should rest with His Majesty's Government in consultation, in cases affecting the self-governing Dominions, with the Government of that Dominion. Once a decision has been arrived at on that point no difficulty is anticipated as regards their final inclusion in schedules, for the two parties appear to be bound, unless they reserve a claim, to submit it to the arbitration of the Commission, and are consequently bound to include it in a schedule. You will have observed, from Mr. Bryce's despatch, No. 182, of August 25th last, copy of which was communicated to you on the 16th September,\* that the Convention is more likely to be confirmed by the Senate if it is accompanied by a schedule of the claims of either party against the other, and you will see from Mr. Mitchell Innes's despatch enclosed in this letter that the State Department are anxious to proceed with the matter as soon as possible. It is therefore likely that His Majesty's Government may before long be pressed to communicate to the United States Government the list of claims—now being prepared—against the United States which they desire to include in the first schedule, and also to intimate whether they will offer objection to the submission to the Tribunal of any claims put forward by the United States Government. Consequently, although it is hoped that it will be found possible to include in the first list all British claims against the United States it may still be found necessary, should answers be long delayed to the circular recently sent by the Colonial Office to the Governments of the Crown Colonies, to put into a subsequent list any Colonial claims that may be received after the first list has been settled.

I am to ask that any observations which Mr. Secretary Harcourt may desire to offer on the considerations put forward in this letter may be communicated to this Office at as early a date as possible.

I am, &c.,  
LOUIS MALLET.

Enclosure 1 in No. 61.

(No. 221.)

Sir, British Embassy, Washington, November 29th, 1910.  
Your despatch, No. 340, of the 17th instant raises two points in connection with the Pecuniary Claims Agreement now under negotiation which it is apprehended may cause difficulty.

The first concerns Article 3, which provides for the appointment of the Court by embodying Articles of the Hague Convention, and which, as noted in your despatch under reply, is understood by the United States negotiators as permitting us to change our national arbitrator so as to admit of the appointment of one or more representatives of the self-governing Dominions. Such representation on the Court was, as you are aware, a point to which the Dominions concerned attached great importance, and to which, indeed, may be ascribed largely their acceptance of the agreement. But, as you have further perceived, the practical realisation of this arrangement presents difficulties which might, without care and consideration, cause inconvenience to the Court and to claimants. This risk could have been guarded against to some extent, had the practical working of the arrangement as to the appointment of colonial arbitrators been fully provided for in the agreement. This was unrealisable because of the dislike of the American negotiators to the idea of the arrangement as contrary to the best principles of international arbitration, although they were willing to accept it as a necessary concession to the policy of communities not so far advanced as themselves in the acceptance of those principles. It seemed also undesirable from our point of view, because no accurate anticipation could be formed of the extent to which the Dominions would avail themselves of such a privilege. It might well be that a Dominion might feel itself called upon to give full effect to a specific provision in the agreement, when, failing such provision, it would be content, when it came to the practical point, to leave its interests to the Imperial arbitrator. Once the principle has been conceded by His Majesty's Government and the United States Government considerations of a practical character may be expected to count with a Dominion Government. Such considera-

\* No. 51.

tions would include that of the expense of special representation on the Court, as His Majesty's Government would presumably take on itself the whole expense of the Imperial arbitrator, counsel, and secretaries. Another consideration might be suggested by the increasing recognition in the Dominions that Imperial representation carries more weight in international bodies and can be no less responsive to their local interests than special representation. Moreover, an examination of the real extent of the interests of self-governing Dominions likely to be concerned in the arbitration suggests that two only—Canada and Newfoundland—will certainly feel called upon to take advantage of special representation. Should, however, others, such as New Zealand, eventually decide to be represented, it will be shown that no serious practical difficulty need necessarily be encountered.

A constant change of our representative, as you observe, is open to objection, both on the ground of unduly straining the friendly interpretation of Article 59 of the Hague Convention and on that of unnecessary expense. Any arrangement should be avoided such as would require that two or three arbitrators, Imperial and Colonial, should be "standing by" and relieving each other as the local interests concerned in each claim might require. But this can be avoided by an arrangement of the order in which claims are to be heard. Under Article 5 the Tribunal has full powers in this respect, and it has never been contemplated that the claims should be dealt with in the order as scheduled, or otherwise than as might best suit the convenience of the Court and the claimants. No serious difficulty is anticipated in securing that when a Colonial arbitrator takes his place all the claims in which he is concerned shall then be dealt with so that he may finally give place to another. Some difficulty may be caused by the possibility that a supplementary schedule may contain claims which will confuse a programme of hearings drawn up on these lines. But, as the period allowed for the negotiation of such schedules terminates within four months from confirmation of the agreement, such a schedule would either be agreed on in time for consideration by those arranging the programme of proceedings, or would be so far advanced that provisional arrangements could be made for it.

In this connection it is also to be observed that the place of meeting of the Court can itself be changed to suit the convenience of claimants. It is hoped to secure that this faculty may be used by holding the hearings of claims in so far as possible elsewhere than Washington when other centres are obviously more accessible to the majority of those concerned. This also will require preliminary arrangement and agreement, the lines of which, however, will probably generally coincide with those regulating the arrangements for Colonial representation.

It may, therefore, be considered that the difficulties inherent in the point first raised in the despatch under reply can be dealt with by careful preliminary arrangement of the proceedings on friendly and informal lines between our agent and that of the United States after confirmation of the agreement. Such an arrangement must, of course, be based on friendly give-and-take and the greater convenience of the larger number. Some will, therefore, no doubt, be less fortunate than others, but the general results will be unquestionably better than those obtained by a formal cast-iron regulation arrived at heretofore or hereafter before the interests to be dealt with can be fully appreciated.

The other point raised in your despatch under reply is of less importance. It would not seem to be necessary, moreover, to read Article I. as preventing the presentation of claims before confirmation of the agreement. Another interpretation of the wording, and certainly that which was intended by the drafters, would make the clause fix only the end of the period for presentation and permit presentation to-day. In any case that is the interpretation most convenient to both parties and the possible alternative reading is consequently negligible. It would not in any case have caused difficulty, in view of the latitude allowed on formal points on both sides in relations between the State Department and Senate Committee on Foreign Relations.

It should have been possible by now to have reported some progress towards agreement as to the first schedule, for, as you are aware, the State Department wish to submit it to the Senate concurrently with the agreement and to submit the agreement soon after Congress meets next Monday. They are, therefore, as anxious as is the Embassy to put the matter through; but the absence in Canada of Mr. Hoyt, followed by his illness in Washington, made it impossible for those in charge of the matter under him to proceed. The regrettable death of the Councillor of the State Department last week has now made it possible for some other official to



obtain full powers from the Secretary of State. This, under private pressure from the Embassy, will be effected this week.

I have, &c.,  
A. MITCHELL INNES.

Sir Edward Grey, Bart., M.P.,  
&c., &c., &c.

Enclosure 2 in No. 61.

Sir EDWARD GREY to Mr. MITCHELL INNES (Washington).

(No. 124.) R.

Foreign Office, December 6, 1910, 5.15 p.m.

Your despatch, No. 221 [of the 29th ultimo: Pecuniary claims].

I gather from the last paragraph that negotiations may be actually in progress with the State Department about the schedule to be attached to the agreement.

If so, such negotiations should be discontinued pending the receipt of further instructions which will be sent you as soon as possible. The best mode of dealing with claims under the Convention is now being carefully considered here.

39668

No. 62.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 29 December, 1910.)

[Answered by No. 63.]

SIR,

Foreign Office, December 28, 1910.

In my letter of the 12th instant,\* with regard to the pecuniary claims agreement between this country and the United States Government, I reminded you that Sir E. Grey was anxious that every known claim on either side should be included in the first schedule. Since that letter was written this Department has had the advantage of a personal discussion with His Majesty's Ambassador at Washington, who has recently been spending a few days in London, with regard to the composition of the schedules of claims.

In Mr. Bryce's opinion, it would not be good policy to adhere to the principle of pressing for the inclusion of all the British claims in the first schedule, as he fears that the presentation of so long a list might induce the United States to press claims of theirs to which objection is taken on our side, and might prejudicially affect the passage of the Convention through the Senate. In His Excellency's opinion it might be wiser that only a certain number of claims should be selected from the whole list for inclusion in a first schedule for submission to the Senate with the Convention. Once the Senate has accepted the Convention and the first schedule, and the latter has been confirmed by the two Governments by an exchange of notes, Mr. Bryce does not anticipate any difficulty in arranging for the inclusion in subsequent schedules of all the claims which may have been presented on either side, and which both parties are willing should be submitted to the Commission.

Sir E. Grey fully recognises the force of the contention put forward by Mr. Bryce, and proposes accordingly to give His Excellency full discretion as to the claims which he should select for inclusion in the first schedule.

A full list† of all the known claims against the United States has been compiled and a copy of it is enclosed herein. Some of these claims may subsequently prove to be devoid of foundation, but, subject thereto, this list comprises all the claims which have been brought to Sir E. Grey's notice up to date and for the presentation of which to the United States Government His Excellency must provide within four months of the confirmation of the Convention. Copy of a list of claims‡ which Sir E. Grey, as at present advised, does not propose to present to the United States Government is also enclosed.

Copies of both lists have been communicated privately to Mr. Bryce.

\* No. 61.

† Schedule III only is printed here.

‡ Not printed.

I am to add that Mr. Bryce attaches the greatest importance to securing the acceptance of the Convention and first schedule by the present Senate, which goes out on the 4th of March next.

I am, &c.,  
LOUIS MALLET.

Enclosure in No. 62.

SCHEDULE III.

GENERAL LIST OF CLAIMS BY CANADIAN BRITISH SUBJECTS.

CANADIAN.

The representatives of Miss ELIZABETH CADENHEAD.

Miss Cadenhead was killed by a United States soldier while walking in the streets of Sault Ste. Marie, a town on the Canadian border in the State of Michigan. The soldier was pursuing an escaped prisoner, at whom he fired in the course of his flight: the soldier missed his aim and the bullet struck and killed Miss Cadenhead. The date of the occurrence was July, 1907.

This claim certainly ought to be presented.

THE CANADIAN ELECTRIC LIGHT COMPANY.

The claim is for damages for injuries to its cable by the United States gunboat "Essex" between Levis and Quebec City, July 17th, 1904. The "Essex" fouled the cable with her anchor. The claim has been recommended to Congress, but there is nothing to show that the bill has yet been passed and the claim paid.

LA "CANADIENNE."

A collision took place between the "Canadienne," a Canadian Government steamer, and the "Yantic," a United States gunboat. An enquiry was held by the Montreal Harbour Board, all of whom found that the "Yantic" was to blame, and three out of the five also found that the "Canadienne" was to blame.

The date of the collision was October 29th, 1897, and it happened in the St. Lawrence River between Quebec and Montreal.

THE CAYUGA INDIANS.

This claim dates from 1789, when the Cayuga Indians ceded their lands, now the County of Cayuga, to the State of New York. By a treaty of 1789 the State agreed to pay the Indians an annual sum of 500 dollars silver: by a subsequent treaty in 1795 the amount was raised to 2,300 dollars. Several payments are endorsed on the back of the treaty in the possession of the Canadian branch of the tribe. It appears that about three-quarters of them settled in Canada.

At the conclusion of the war of 1812, the State of New York refused to pay the annuity or any part of it to the Canadian branch of the tribe on the ground that they had forfeited their rights by fighting on the British side.

The matter was referred to the Commissioners of the Law Office of New York State, who reported that the treaty was not abrogated by the war, and that the Canadian branch were entitled to a share of the annuity.

In 1890, and again in 1891, the State Senate recognised the claim, but the Bill was defeated in the Assembly.

THE "COQUITLAN."

The "Coquitlan" was seized in 1892 by the American Government authorities for an alleged breach of the revenue laws off the coast of Alaska. She was seized



in port at Port Etchez, but the alleged offence was that she had transferred supplies, &c., within four leagues of the coast. The supplies had in fact been transferred but not within the three-mile limit. The ship was condemned in the lower court, but the decision was reversed on appeal, and the vessel released.

The United States Government practically admitted liability to pay compensation in 1904, but wanted further evidence as to the losses that had resulted.

The claim has not yet been settled.

#### THE "FAVOURITE."

A Canadian sealer seized in 1894, the first year of the Behring Sea Award Regulations, for an alleged breach of the arrangement that during the close season all the fishing implements were to be sealed up while the vessel was within the prohibited area. The fishing implements proper were all sealed up, but one gun, with shortened barrels, used for signalling to the boats when they were away from the vessel, was found unsealed. The vessel was seized and taken to Vancouver, where she was handed over to the British authorities. The British Admiral, when applied to by the local Customs authorities, said he thought there was no case against the "Favourite," and she was released.

The United States Government disclaimed liability, but agreed that the matter should be referred to the Joint High Commission in 1898. No settlement was, however, arrived at there.

#### GREAT NORTH-WESTERN TELEGRAPH COMPANY OF CANADA.

Claim for damage to the Company's telegraph cable by the United States gunboat "Essex," July 17th, 1904, between Quebec City and Levis.

Submitted to Congress in 1905, and on the 24th May, 1906, the House Committee on Claims reported favourably. No further steps appear to have been taken.

#### THE "KATE."

Under the Behring Sea Award vessels were prohibited from using firearms in certain waters for the purposes of sealing. The "Kate" was a Canadian sealer, and was seized in 1896 (August 26th) because she had on board two fur seal skins bearing evidence of having been shot in the Behring Sea. She was towed to a port in Alaska and there released by the officer in command of the ships forming the American patrol service, as there appeared to be no case against her. When she was searched three days after the seizure, there were no firearms found on board at all.

The United States Government declined to admit liability, and no satisfaction has ever been obtained.

#### THE "LORD NELSON."

This claim dates from 1812. On June 5th in that year, nearly two weeks before the declaration of war between the United States of America and Great Britain, the "Lord Nelson" was seized for an alleged breach of the embargo laws on Lake Ontario by the American brig "Oneida": she was taken before the District Court of New York and condemned, and the proceeds paid into court. After peace was restored the owners made suit to recover the property on the ground that it was captured in time of peace, and a decree issued for the money to be paid over to them. It was then found that the officer of the court had misappropriated the proceeds of the sale.

The Executive Government made frequent efforts to get the claim paid by Congress. It was brought before the Claims Commission of 1853 and disallowed

on the ground that it originated in a transaction before 1814, the English Commissioner's contention that it arose out of the defalcation, which was after 1814, being over-ruled.

The claim has frequently been recommended to Congress since that date. The case was before the Court of Claims in 1859, but the Court were divided in opinion.

#### THE RAMSAY-RAY CLAIM.

In 1900 Major Ray was in command of the district of North Alaska, and on March 15th permission was granted to him to cut timber from vacant Dominion lands in the Yukon territory for constructing barracks and other Government buildings at Eagle City. Ramsay was a contractor working for Major Ray. On the completion of the work Ramsay stated that of 300,000 feet of timber used, 156,930 feet had been cut in Alaska, and the remainder, 143,070 feet, had been cut in Canada, but of this latter amount he had bought 68,500 feet from a man named Howard Mountain: no payment has ever been made to the Canadian Government in respect of the dues on the cutting of this 68,500 feet; the sum claimed is only 354 dollars.

#### THE "WANDERER."

A Canadian sealer seized in 1894, the first year of the Behring Sea Award Regulations, for an alleged breach of the arrangement between the two Governments that during the close season all the fishing implements were to be sealed up while the vessel was within the prohibited area. The fishing implements proper on board the "Wanderer" were all sealed up, but one gun, the personal property of the mate, was found: he had not surrendered it to be sealed up but had stowed it away, and it was found by the officer of a American cruiser. The gun had not been used.

The vessel was taken to Vancouver, where she was handed over to the British authorities. The British Admiral, when applied to by the local Customs authorities, said he thought there was no case against the "Wanderer," and she was released without any proceedings being taken.

The United States Government disclaimed liability, but agreed that the matter should be referred to the Joint High Commission in 1898. No settlement, however, was arrived at there.

38029

No. 63.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 67.]

SIR,

Downing Street, 6 January, 1911.

I AM directed by Mr. Secretary Harcourt to acknowledge the receipt of your letters of the 12th of December and of the 28th of December,\* on the subject of the Pecuniary Claims Agreement with the United States.

2. In reply, I am to request that you will inform Secretary Sir Edward Grey that it appears clear that for the Canadian claims a Canadian judge must be appointed, and that it must be left to the Government of Newfoundland to decide whether or not they will entrust the consideration of their claims to the Canadian judge. The Newfoundland claims will, therefore, require to be grouped separately so as to leave it open for the Government of Newfoundland to have a Newfoundland commissioner appointed if they should desire to do so.

3. With regard to the case of the Webster claim, Mr. Harcourt gathers from your letter that Sir Edward Grey is inclined to think that if any compensation fell to be awarded it would have to be defrayed by His Majesty's Government. In this view Mr. Harcourt concurs. It appears, indeed, to him clear in principle that liability for this claim ought to be accepted by the Government of New Zealand,

\* Nos. 61 and 62.



but as that Government are not prepared to accept liability, and as, in his opinion, the prospect of an adverse award may be regarded as very slight, while, on the other hand, there is risk of difficulties with the United States if arbitration is refused, he considers that it is justifiable, in order to secure the confirmation of the Treaty, that His Majesty's Government should accept liability to pay and, if Sir E. Grey concurs, he is prepared so to inform the Government of New Zealand while making clear that this decision is merely one of practical convenience in a case where the risk involved is very small, and expressly maintaining the principle that the liability rests with that Government.

4. The claims, therefore, other than those by or against Canada and Newfoundland, may all be dealt with by one judge, but Mr. Harcourt has some doubt as to whether this judge should be the Canadian judge who will deal with the Canadian claims. It is conceivable that some pressure might be brought to bear upon the Canadian judge with a view to securing his acceptance of the views of his American colleague with regard to some of the other claims in return for concessions by his colleague with regard to Canadian claims. It is more than likely that the judge could be relied upon to carry out his duties in a purely judicial spirit, but subject to any views which Sir Edward Grey may have to express, Mr. Harcourt is inclined to think that it would be safer to avoid any allegation of the surrender of other British interests for the sake of Canadian interests by appointing for the claims other than those affecting Newfoundland and Canada a British judge. If all the claims can be dealt with, as in this case would be the result, by not more than three British Commissioners, all reasonable requirements of convenience would seem to be met.

5. With regard to the composition of the schedule of British claims, Mr. Harcourt agrees that only a certain number of claims should be selected from the whole list for inclusion in the first schedule, and that Mr. Bryce should be given full discretion as to the selection. With regard to Canada (and Newfoundland if the latter should decide to put forward any claim) Mr. Bryce will, no doubt, communicate with those Governments before deciding what Canadian (or Newfoundland) claims should be included in the first schedule.

6. As far as Mr. Harcourt is aware, with the exception of the Webster claim, which it has been suggested above should be treated as one affecting the Imperial Government, there are no claims affecting New Zealand or the Commonwealth of Australia. There are, however, certain American claims affecting South Africa, on which I am to offer the following comments:—

In the preliminary American List of Claims which was put forward in 1908 were included the claims of Brown, Dietze, Reagan, and the Union Bridge Company.

(a) The first claim arises out of the wrongful action of the Government of the late South African Republic in depriving R. E. Brown of a mining claim, his claim being subsequently barred by legislation of Volksraad. The claim is accordingly based on the ground that a State which succeeds by conquest to the territory of another State is liable for the torts of the annexed State, and presents some similarity to the case of the Hamburg underwriters, which is to form the subject of an arbitration between the Government of Germany and His Majesty's Government. It would appear clear that until that arbitration has been decided this case should not be submitted to arbitration, but should be reserved until the decision of the pending arbitration has been given.

(b) The claim of the Union Bridge Company is for bridge work which was to have been supplied under contract to the Government of the late Orange Free State, and is, therefore, based on the ground that the successor is liable for the contracts of an annexed State. It is, therefore, similar to the Plettner case, which is to form the subject of an arbitration between Great Britain and Germany, and this case also should, in Mr. Harcourt's opinion, be reserved pending the result of that arbitration.

(c) The case of Dietze and Reagan arose from the operations of the South African War; it is alleged that two horses of Dietze's were wrongfully confiscated by the British military authorities; while in the Reagan case the claim is based on imprisonment by the military authorities during the war as a measure of military precaution. It appears to Mr. Harcourt that neither of these cases should, on any account, be

allowed to go to arbitration, as His Majesty's Government have repeatedly declined, in controversy with the German Government, to allow the action of their military officers in the field to be submitted to arbitration. I am to add that an unfavourable result would render His Majesty's Government liable to claims of unknown extent and amount. Mr. Harcourt considers, therefore, that these claims must certainly be reserved.

7. I am to add that in the case of the Dietze, Reagan, and Union Bridge Company claims any liability incurred would, looking to the decision on the German claims, have to be accepted by the Imperial Government, and should not fall on the South African Government as being claims arising out of the war. The position with regard to the Brown case is different in this respect, but the question can be further discussed hereafter, if it becomes necessary to consider whether the claim shall be totally withheld from arbitration or not.

8. Before finally agreeing to the inclusion in the schedule of any claim affecting the Crown Colonies, Mr. Harcourt would be glad to have an opportunity of expressing his opinion on the claim.

I am, &c.,  
C. P. LUCAS.

1536

No. 64.

AUSTRALIA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 16 January, 1911.)

[Copy to Foreign Office, 23 January, 1911. L.F.]

(Confidential.)

SIR,

Governor-General's Office, Melbourne, 13th December, 1910.

REFERRING to your predecessor's despatch, confidential, dated 10th October last,\* with respect to the Agreement between Great Britain and the United States of America for the submission to arbitration of pecuniary claims outstanding between the two countries, I have the honour to inform you that I am advised by His Majesty's Prime Minister of the Commonwealth that the Federal Government have no claims against the United States of America which it is desired to bring under notice.

I have, &c.,  
DUDLEY,  
Governor-General.

1537

No. 65.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 16 January, 1911.)

[Copy to Foreign Office, 23 January, 1911. L.F. See No. 66.]

(Confidential.)

SIR,

Government House, Ottawa, 3 January, 1911.

WITH reference to Lord Crewe's confidential despatch of the 10th of October last,† on the subject of the agreement for the submission to arbitration of pecuniary claims outstanding between Great Britain and the United States, I have the honour to transmit, herewith, for your consideration, a copy of a letter from His Majesty's Canadian Secretary of State for External Affairs regarding the desirability of urgency being used in the settlement and ratification of the schedules of claims to be submitted, and expressing the hope that the schedules may be placed before the United States Senate at an early date.

\* No. 55.

† No. 56.



I am forwarding a copy of this despatch and its enclosures to His Majesty's Ambassador at Washington.

I have, &c.,  
GREY.

Enclosure in No. 65.

SECRETARY OF STATE FOR EXTERNAL AFFAIRS to the GOVERNOR-GENERAL.

TO HIS EXCELLENCY THE GOVERNOR-GENERAL,

THE undersigned, to whom was referred a confidential despatch to Your Excellency from the Secretary of State for the Colonies, dated 10th October last, enclosing copy of the special agreement for the submission to arbitration of pecuniary claims outstanding between Great Britain and the United States, has the honour to submit that Your Excellency's Ministers are strongly impressed with the desirability of urgency being used in the settlement and ratification of the schedules of claims to be submitted. He would represent that many of the Canadian claims are of long standing, the justice of some has been admitted by the United States Government or by the United States House of Representatives, and the claimants are being exposed to serious and undue hardship by the protracted delay in their settlement.

He would, therefore, venture to recommend that Your Excellency should be pleased to represent these views of your Ministers to the Secretary of State for the Colonies, to the end that all possible steps may be taken to ensure the schedules being placed before the United States Senate at an early date.

The undersigned further recommends that a copy of this report be communicated to His Majesty's Ambassador at Washington.

All of which is respectfully submitted.

WILFRID LAURIER,

For Secretary of State for External Affairs.

Ottawa,  
27th December, 1910.

2878

No. 66.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 28 January, 1911.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—To Washington, telegram 12; January 27, 1911: (Pecuniary Claims Convention).

Reference to previous letter: Colonial Office, January 23, 1911.\*

Foreign Office,  
January 28, 1911.

Enclosure in No. 66.

TELEGRAM to Mr. BRYCE, Washington, Foreign Office, January 27, 1911.

No. 12 (R.) Are you preparing first schedule of claims or do you want further information from us?

2898

No. 67.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 30 January, 1911.)

[Answered by No. 69.]

SIR, Foreign Office, January 28th, 1911.  
SECRETARY Sir E. Grey has carefully considered your letter, 38029/10, of the 6th instant,† on the subject of the Pecuniary Claims Agreement between this

\* L.F. transmitting copy of No. 65.

† No. 63.

country and the United States, and I am to request you to inform Mr. Secretary Harcourt that he concurs in the proposal contained in the third paragraph of your letter to inform the Government of New Zealand that, in the event of an adverse award in the matter of the Webster claim, His Majesty's Government would accept liability to pay.

As regards the composition of the British Commission, Sir E. Grey observes in paragraph 4 of your letter that Mr. Harcourt is of opinion that a British judge should be nominated, in addition to a Canadian and Newfoundland judge, for the purpose of dealing with claims other than those affecting Canadian or Newfoundland interests.

Sir E. Grey does not fail to appreciate the arguments in favour of this proposal, but he considers that the inconvenience resulting from the appointment of three Commissioners on the British side would outweigh any possible advantages to be derived from such a course. He does not consider it feasible to arrange the work of the Commission in such a way that one batch of claims should be completely disposed of before work on another batch should be begun. However carefully the claims may have been prepared, there is every probability that points will be taken on one side which will have to be met on the other, and which may necessitate reference to the locality where the claim arose. Such reference would inevitably take up much time, and meanwhile the Commission would find itself obliged to turn its attention to another set of claims. Whenever this occurred, and whenever the Commission while engaged on one category of claims was compelled to proceed to the consideration of another category it would be necessary that the British Commissioner for the time being should resign, and that another should be appointed in his place: this appointment might be followed a few days, or weeks, later by the re-appointment of the first, a highly inconvenient method of proceeding, seeing that a fresh letter of appointment from the Secretary of State would in each case be required.

Moreover, Sir E. Grey understands that the holders of the higher judicial posts in this country, from whose ranks a British Commissioner would necessarily have to be selected, are at present fully occupied, and could ill be spared from their work. It would, therefore, be particularly unfortunate if the English judge were compelled to remain idle at Washington for weeks, or even months, in consequence of it being necessary, owing to lack of evidence, to adjourn the further consideration of the schedule on which he was engaged.

For these reasons Sir E. Grey trusts that Mr. Harcourt will not press his request for the appointment of a British arbitrator in addition to those for Canada and Newfoundland, and will be disposed to agree that all reasonable requirements will be met by the course proposed.

With regard to the claims of Brown and the Union Bridge, mentioned in paragraph 6 of your letter, I am to observe that these claims raise questions similar to those in the cases which Sir E. Grey has informed the German Government that he is prepared to submit to arbitration as coming within the scope of the Anglo-German Arbitration Convention. It appears to Sir E. Grey, therefore, to be impossible to reserve these claims, seeing that His Majesty's Government are bound by a similar convention with the United States Government, who have as much right to demand arbitration in these two cases as the German Government have in the cases of Kraemer and Plettner, and he feels sure that on reconsideration Mr. Harcourt will agree that His Majesty's Government must preserve a consistent attitude in these questions by consenting to arbitrate with the United States Government claims similar to those which they have consented to arbitrate with Germany, and by refusing to the United States Government what they have refused to Germany.

Moreover, it is as yet uncertain whether the German Government will accept the offer made to them, and in any case there is likely to be great delay before the cases actually go to arbitration. There is, therefore, no adequate ground for reserving these claims on the ground that they can later on be decided by reference to decisions in the arbitration with Germany, nor would such a course appear to be prudent, since the Claims Commission at Washington is more likely to be a satisfactory tribunal from the British point of view than the tribunal set up at the Hague.

For these reasons Sir E. Grey hopes that Mr. Harcourt will allow the Brown and Union Bridge Claims to go before the Commission should the United States Government include them in their schedule.



A memorandum is enclosed showing the present position of all the United States pecuniary claims against Crown Colonies and Protectorates so far as is known in this Department, as well as a copy of a despatch to His Majesty's Ambassador at Washington.

I am, &c.,  
W. LANGLEY.

Enclosure 1 in No. 67.

The following is a list of all the United States pecuniary claims against Crown Colonies and Protectorates so far as is known to the Foreign Office. It is taken from the original unrevised list of United States claims communicated to Mr. Bryce by Mr. Root on March 10th, 1908.

(1) *Fiji Land Claims*.—The claimants are Messrs. Isaac N. Brower, J. P. Williams, G. R. Burt, and Benson R. Henry (not Henry R. Benson, as sometimes printed).

In paragraph 2 of their letter of October 3rd, 1908, the Colonial Office stated "Lord Crewe is prepared to concur in the submission to arbitration under the Convention of the Fiji land claims."

(2) *Sierra Leone Revolution Claims, 1898*.—The claimants are the Home Frontier and Foreign Missionary Society and Daniel Johnson.

In paragraph 2 (b) of their letter of December 12th, 1908, the Colonial Office withdrew their opposition to the inclusion of those claims in the list for arbitration.

They added that no particulars with regard to Daniel Johnson's claim had been furnished by the United States Government, though they assumed that it was of the same nature as that of the Missionary Society. Pending the receipt of such particulars they assumed that the United States Government would not be notified of the willingness of His Majesty's Government to allow the claim to go to arbitration. Mr. Bryce, who was reminded of the matter, subsequently telegraphed that the United States Government had been persuaded to withdraw the claim "on basis of compromise." Consequently the particulars were never sent.

(3) *Adolf G. Studer* against the Sultan of Johore.

In a letter of January 14th, 1909, the Colonial Office stated that "Lord Crewe, while regarding the inclusion of this claim as in itself inadmissible, would have been unwilling to allow the treaty to break down on this point alone, if any way could be devised for surmounting every other difficulty which still stands in the way of its settlement."

(At the time it was not the only difficulty. The negotiations broke down over the Webster and fishery claims.)

(4) *John F. Brooks*.—Illegal detention of vessel on the Gold Coast in 1881, £2,850.

(5) *Mrs. J. A. Fetters*.—Compensation for slaves emancipated in Jamaica by His Majesty's Government. Amount and date not specified.

(6) *J. W. Copeland*.—False imprisonment in British Honduras in 1887, \$2,000.

(7) *W. S. Matthews and Sons*.—Unfair taxation in British Guiana in 1901, \$8,154.87.

Claims Nos. 4-7 were omitted from the revised list of United States claims communicated by the State Department to His Majesty's Embassy on June 13th, 1908.

The original list was communicated to the Colonial Office at the time of its receipt, but there seems to have been no correspondence about the above claims, which were, no doubt, subsequently dropped by the United States Government owing to their lack of foundation. They may, of course, be presented again under the present agreement.

Enclosure 2 in No. 67.

(No. 32.)

SIR, Foreign Office, January 28th, 1911.

WITH reference to Mr. Mitchell Innes's despatch, No. 221, of November 29/10, I transmit herewith copies of correspondence with the Colonial Office on the subject of the Pecuniary Claims Convention.

I desire to call Your Excellency's special attention to paragraph 5 of the letter from the Colonial Office of the 6th instant with regard to the composition of the

first schedule, and to request you to bear in mind the wish therein expressed that with regard to Canada (and in a certain contingency Newfoundland) you should communicate with those Governments before deciding what Canadian (or Newfoundland) claims should be included in the first schedule.

I should be glad if Your Excellency would inform me by telegraph in due course of the claims on either side which it may be desired to include in the first schedule.

I am, &c.,  
(For the Secretary of State),  
W. LANGLEY.

His Excellency the  
Right Honourable  
James Bryce, O.M.,  
&c., &c., &c.

4152

No. 68.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 9 February, 1911.)

[Answered by No. 71.]

SIR, Foreign Office, February 8, 1911.

WITH reference to my letter of the 28th ultimo\* and previous correspondence, I am directed by Secretary Sir E. Grey to transmit herewith, to be laid before Mr. Secretary Harcourt, a copy of a despatch from His Majesty's Ambassador at Washington, with regard to the Pecuniary Claims Convention, from which you will observe that the United States Government have now selected an official to act as delegate of Mr. Anderson in negotiating the schedule of claims to be presented to the Senate for confirmation with the Convention.

With regard to the selection of a neutral Commissioner, it appears from Mr. Bryce's despatch that the United States Government are not disposed to consent to the employment of Dr. Lammasch in that capacity. Mr. Bryce accordingly refers to the suggestion made by them in February, 1909, of which your Department was informed in my letter of the 8th of that month,† that either Colonel Eugene Borel or Mr. Max Hueber should be invited to accept the post of neutral arbitrator. You will recollect that at that time His Majesty's Government were prepared to consent to the appointment of Colonel Borel should the Governments of Canada and Newfoundland agree to his selection, but before any communication on the subject was made either at Ottawa or St. John's, the United States Government proposed the appointment of Dr. Lammasch.

On further consideration Sir E. Grey has formed the opinion that Colonel Borel would not be a suitable nomination for the office in question: his knowledge of English is uncertain, while it was evident from his proceedings at the last Peace Conference that he does not possess the type of mind suited for dealing with arbitrations. In these circumstances he desires me to suggest to you the name of Monsieur Fromageot, a French lawyer practising in the Court of Appeal at Paris, for the post of neutral Commissioner. Monsieur Fromageot is well known to this Department, having served as one of the French delegates at the Second Peace Conference at The Hague, as well as at the International Naval Conference in London in 1909, where he was of great service in the preparation of the propositions which were drawn up as a basis for the discussions of that Conference. Monsieur Fromageot has a thorough knowledge of the English language, and has also been employed on different occasions by the French Government in connexion with legal work of an international character.

Should Mr. Harcourt concur in this recommendation, Sir E. Grey hopes that he will endeavour to secure the assent of Canada and Newfoundland at an early date in order that it may then be communicated to the United States Government.

You will also observe that Mr. Bryce gathers that the State Department would wish not to agree to a remuneration for the Commissioners proportioned to the time that might be occupied by the arbitration. Sir E. Grey is unable to concur in this view: his experience has led him to the conclusion that, when the members of a

\* No. 67.

† No. 174 in Dominions No. 20.

Mr. Bryce,  
No. 91,  
March  
12th, 1908.

Colonial  
Office,  
October  
3rd, 1908.

Colonial  
Office,  
December  
12th, 1908.

Mr. Bryce,  
Telegram  
147, De-  
cember  
29th, 1908.

Mr. Bryce,  
No. 217,  
June 24th,  
1908.



Commission of this kind are remunerated by a lump sum payment fixed in advance and determined without reference to the duration of the Commission, there is an inevitable tendency to bring the whole proceedings to a close at the earliest possible moment, with the result that there is no adequate examination of the more complicated questions. In his opinion it is essential that the financial arrangements for the Commission should be framed on the basis of the duration of the labours of the Commission, and with this view he has directed me to lay the following suggestions before you, for your consideration:—

As regards (A) the expenses of the Commission; he considers that the arbitrators might be remunerated at the rate of \$25 a day with travelling expenses and \$15 a day for subsistence; if an arbitrator is a judge in the service of one of the parties he should continue to draw his salary from that party, the Commission to bear only the difference between that salary and the \$25 a day. Thus, if a Canadian judge were appointed as a Commissioner, Canada would continue to pay his salary, as would Newfoundland, *mutatis mutandis*.

Sir E. Grey is further of opinion that a shorthand writer will be required, and that he should be paid by the Commission; also that the Government of the place where the Commission meets should be asked to provide a place for its meetings and accommodation for the secretaries and the papers.

With reference to the question of printing, Sir E. Grey would propose that, if the United States Government agree, they should undertake the printing necessary for the Commission, the costs to be charged as part of the expenses of the Commission.

He would also propose that the expenses of the Commission, so far as they fall to be paid by Great Britain, *i.e.*, half the deficiency after the deduction from the gross cost of the five per cent. of the awards as provided under Article 9 of the Convention, should be defrayed by His Majesty's Government.

As regards (B) the expenses of the parties, Sir E. Grey would suggest that each Government should provide one Secretary for the Commission at its own expense, and that each Government should pay the expenses of its own agent and counsel.

As regards the counsel employed on the British side, Canada would be responsible for the expenses of counsel in the Canadian cases, and Newfoundland for counsel employed in Newfoundland cases; the expenses of the British Agent should, it is considered, be borne by His Majesty's Government.

The net result of these arrangements would be that the Dominions would not be asked to contribute to the cost of the Commission beyond the responsibility for the cases in which they are interested, and the loan of the services of a Dominion Judge if he were appointed a Commissioner.

I am, &c.,  
LOUIS MALLET.

Enclosure in No. 68.

(No. 21.)

SIR, British Embassy, Washington, January 17, 1911.  
SINCE the reference in Mr. Mitchell Innes's despatch, No. 221, of the 29th November, 1910, to the situation in regard to the negotiation of the Schedules for the Pecuniary Claims Convention, I have, in conversations with the Secretary of State and Mr. Anderson, repeatedly represented the necessity of getting this negotiation started. Congress adjourns on March 4 and the Senate have their hands very full for the six weeks that remains. The urgency of the situation seems to be realised by the Dominion Government, who have sent me a copy of their despatch of the 3rd January, addressed to His Majesty's Government.

The representations which I have made repeatedly to the United States Government have so far succeeded as to lead them to take the first step—that of selecting an official to act as delegate of Mr. Anderson in negotiating the Schedule. Mr. Lansing is already at work on the Schedule, and will probably eventually be nominated agent in pursuance of the view expressed by the State Department, that it will be an advantage to have the same official in charge throughout, as well in the preparation of the Schedules as in the subsequent conduct of the matter, a view held not only in regard to the separate interests of each of the parties, but also as to their joint interests in the smooth and speedy working of the arbitration, which will largely depend on arrangements and understandings arrived at between the representatives of either party in these preliminary proceedings.

A matter requiring immediate consideration is the choice of a third neutral Commissioner in place of Dr. Lammach. I am informed that the State Department are so much dissatisfied with his attitude in regard to the fees to be paid the Arbitrators in the North Atlantic Coast Fisheries Arbitration, of which he was President, that they will on no account consent to his employment in this matter. I am also of opinion that any honorarium such as claimed in the above arbitration would be excessive in this case, and I gather that the State Department would wish not to agree to a remuneration for the Commissioners proportioned to the time that might be occupied by the Arbitration. In regard to the choice of a neutral third Commissioner, I would refer you to my telegram, No. 30, of 5 February, 1909.

A final decision as to the claims to be presented, though desirable as soon as possible, is less pressing, because agreement on a satisfactory first schedule can probably be reached in the claims already before the United States Government. But I take this opportunity of recommending that the claim mentioned in the memorandum of which copies are annexed should be sanctioned for presentation as a case of real hardship.

I also took occasion lately to arrive at an understanding with Sir Edward Morris in regard to the Newfoundland claims. It was arranged that he should furnish the Embassy with a statement showing those American claims which, in view of the Award, Newfoundland were now prepared to settle, and those which it considered the United States Government should withdraw. It is expected that this will very considerably relieve the schedules of "fishery" claims. Sir Edward Morris seemed, in conversation, disposed to drop the somewhat "hypothetic" counterclaim of Newfoundland, and I gathered that he considers that the Award on Question VI. had practically put it out of Court. This makes it all the more desirable to reduce the Schedule of United States claims against Newfoundland as far as possible.

I have, &c.,  
JAMES BRYCE.

The Right Honourable  
Sir Edward Grey, Bart., M.P.,  
&c., &c., &c.

MISS CLARKIN'S LACE.

Mary Clarkin, of Newtown Butler, Ireland, a lacemaker in very poor circumstances, forwarded to Scarles, Babbit and Co., of New York, a parcel of lace, which was accidentally destroyed by fire in the appraisers' warehouse on 13 May, 1909. The lace, valued at £26 8s. 4d. plus 6s. freight and 3s. 3d. insurance—about £27 in all, represented a whole year's work, and its loss caused Miss Clarkin great distress. She has appealed through the British Consul-General to Mr. Loeb, who expressed sympathy and regret that nothing could be done, and she has written to the President.

The case, which seems to be one of real personal hardship, was brought before the United States Treasury, but evidently nothing could be done by way of compensation except by special Act of Congress. There is no prospect of passage for such an Act before next spring.

2893

No. 69.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 75.]

SIR,

Downing Street, 10 February, 1911.

I AM directed by Mr. Secretary Harcourt to acknowledge the receipt of your letter of the 28th of January,\* on the subject of the Pecuniary Claims Agreement between this country and the United States.

2. In reply, I am to request that you will inform Secretary Sir Edward Grey that, in deference to his views, Mr. Harcourt agrees that a separate British judge

\* No. 67.



need not be appointed to deal with claims affecting the United Kingdom or claims affecting the Crown Colonies.

3. Mr. Harcourt will therefore be glad to know whether Sir Edward Grey desires that the Canadian Government should now be approached with the suggestion that the Commissioner appointed to deal with the Canadian claims should also deal with the other claims, or whether it would be preferable that the matter should be delayed until further progress has been made with drawing up the Schedule and the agreement has been accepted by the United States Senate. If it is desired that the Canadian Government should at once be approached, Mr. Harcourt is of opinion that they should be supplied with a list of the claims with which the Commissioner will be required to deal, and that some definite proposals should be made as to the remuneration of the Commissioner.

4. With regard to the South African claims, Mr. Harcourt is prepared to agree that the Brown and Union Bridge claims should go before the Commission if the United States include them in their Schedule. He agrees to this on the understanding that the cost of the Union Bridge case will fall upon the Imperial Government. Sir E. Grey will, no doubt, make any necessary application to the Treasury. In the case of the Brown claim it does not appear to Mr. Harcourt equitable that the cost should be borne by the Imperial Government, as it seems to him that this case stands on a different footing from the Union Bridge case. In the latter case the difficulty arose during the War, and it seems probable that the action of the British authorities in not taking delivery of the goods in question will be challenged. In the Brown case the alleged wrong was committed before the War and the only possible ground of liability is the annexation of the Transvaal by His Majesty's Government and the liability of the latter for the wrongful acts of the Government of the South Africa Republic. It seems to Mr. Harcourt to be fair to hold that the liability attaches to His Majesty in respect of the territory annexed; and I am to remind you that a similar view was taken by the Law Officers in their Opinion of the 30th November, 1900\* (a copy of which is enclosed for convenience of reference), with regard to the debt of the late Republic.

5. Mr. Harcourt, therefore, is prepared to ask the Union Government by telegraph to accept responsibility for this claim and to consent that it shall go to arbitration, but it will be necessary that the claim should not be placed in the Schedule until the Union Government has definitely agreed to accept arbitration, and it will be necessary also, as in the case of Newfoundland, to offer the Union Government the option of appointing a Commissioner to deal with this case.

6. Mr. Harcourt will be glad to know whether Sir Edward Grey concurs in this proposal.

I am to add that a separate letter is being addressed to you with regard to the Webster case.

I am, &c.,  
C. P. LUCAS.

2420

No. 70.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 92.]

Sir,

Downing Street, 14 February, 1911.

WITH reference to previous correspondence on the subject of the Pecuniary Claims Convention with the United States of America, I am directed by Mr. Secretary Harcourt to transmit to you a draft of a despatch† which, with the concurrence of Secretary Sir E. Grey, he proposes to address to the Governor of New Zealand regarding the Webster claim.

2. Mr. Harcourt presumes that Sir E. Grey has obtained, or will obtain, the consent of the Lords Commissioners of the Treasury to the proposal that His Majesty's Government should be responsible for the cost of any adverse award.

I am, &c.,  
C. P. LUCAS.

\* No. 60 in Vol. VI of Law Officers' Opinions.

† See No. 100.

4152

No. 71.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 73.]

Sir,

Downing Street, 15 February, 1911.

IN reply to your letter of the 8th of February,\* I am directed by Mr. Secretary Harcourt to transmit to you, to be laid before Secretary Sir Edward Grey, drafts of telegrams† which the Secretary of State proposes to address to the Governor-General of Canada and the Governor of Newfoundland on the subject of the Pecuniary Claims Convention.

2. It will be seen that the draft telegram to the Governor-General of Canada follows generally the lines suggested in your letter under reference, but that a modification is made with regard to the proposal as to the remuneration of the arbitrator. Mr. Harcourt feels that on general grounds it is not desirable that an arbitrator should be, during the period when he is acting in that capacity, a paid servant of one of the Governments concerned in the arbitration, and he thinks that the Canadian Government is likely to take exception to continuing the ordinary salary of a judge while engaged in an arbitration. The alternative contained in the telegram seems, therefore, to Mr. Harcourt preferable.

3. In the other suggestions in your letter Mr. Harcourt concurs.

I am, &c.,  
C. P. LUCAS.

5131

No. 72.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 17 February, 1911.)

[Answered by No. 82.]

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copies of the following papers:—Washington, Telegram 25, February 13; Washington, Telegram 26, February 14; To Washington, Telegram 37, February 16: (Pecuniary Claims Convention).

Foreign Office,

February 16, 1911.

Enclosure 1 in No. 72.

Mr. BRYCE to SIR EDWARD GREY.

(Received February 14, 8 a.m.)

(No. 25.)

Washington, February 13, 1911.

Pecuniary claims.

Informal negotiations for first schedule indicate following as possible basis of agreement:—

British claims: Cayuga, Rio Grande, "Coquitlan," "Favonrite," "Wanderer," "Kate," "Nelson," "Canadienne," "Eastry," "Lindisfarne," Newchwang, Sidra, "Maroa"; hay claims: four cable companies; Philippine war claims; Hawaiian claims; Hardman, Wrathall, Cadenhead, Robert King, Yukon lumber, Hemming, Reichardt has been settled.

American claims: Webster, [?] Studer, Fiji and Sierra Leone claims, Medeiros, fishery claims against Canada and Newfoundland, and following South African claims: Brown, Union Bridge, Dietze, Chamberlain, Aronfreed, Peter and Reagan.

They have pressed others, including Atlin, which we have refused on various grounds. We might exclude some of smaller South African claims, but to refuse more will cost us concessions, and this would be undesirable. Refusal of South

\* No. 68.

† See Nos. 78 and 79.



African claims would, moreover, endanger passage of agreement. I will telegraph to Canada and Newfoundland as to fishery claims. Your assent as to others desirable as soon as possible, as agreement should go to Senate early next week.

Enclosure 2 in No. 72.

Mr. BRYCE to SIR EDWARD GREY.

(Received February 15, 12 noon.)

(No. 26.)

Washington, February 14, 1911.

Pecuniary claims.

Schedule, as reported in my telegram, No. 25 [of 13th February], agreed to, subject to your approval. United States Government press South African claims, especially Brown and Union Bridge, these [insisting that if\*] South African claims are excluded from first schedule Philippine war claims must be excluded also. We unsuccessfully endeavoured to substitute Hawaiian claims for latter.

Following general terms of submission agreed to as preferable, subjecting certain claims, such as Webster, to special terms. Their main object is to facilitate proceeding, and if there is any difference it is in our favour:—

"General terms of submission: Section 1.—In case of claims originating prior to 1853, arbitral tribunal shall, preliminary to a consideration of legal principles involved and merits of claim, determine whether or not such claim is barred by convention of that year. In case the arbitral tribunal determines it is so barred no further consideration of such claim shall be had, but award shall declare such claim to be barred by convention of 1853.

"Section 2.—In case of claim in which liability has been admitted, and such admission has not been subsequently withdrawn, arbitral tribunal shall limit its consideration to evidence relating to amount claimed, and shall award indemnity, if any, in accordance therewith, provided that such claim has not been previously settled by payment of agreed amount.

"Section 3.—In case of claim not coming within class of barred claims as set forth in section 1, or within class of admitted claims as set forth in section 2, arbitral tribunal shall consider and decide (a) whether or not there is any international liability in regard to such claim; and (b) if foregoing question (a) is answered in the affirmative, what indemnity, if any, should be awarded.

"Section 4.—The inclusion of a claim in any of the following schedules shall operate as a bar to a plea in defence thereto that legal remedies provided by municipal law have not been exhausted, or that claim is now pending before a municipal tribunal of competent jurisdiction.

"Section 5.—The arbitral tribunal, taking into consideration any admission of liability, the nature of a claim, and the equities involved, may add to amount found due upon a claim and include in the indemnity awarded interest on such sum as it may determine at a rate not exceeding 4 per cent. per annum, for a period not to exceed time elapsed between presentation of claim to any governmental authority and the confirmation of schedule in which it is included."

I have submitted terms of reference and draft schedules to Canada, and have cabled to Newfoundland as follows:—

"United States Government have with some reluctance accepted submission in schedule now under negotiation of only those fishery claims listed in Colonial Office letter to you of 14th August, 1908. They wished to add others, but this has been prevented. Submission is also subject to special proviso, as follows:—

"Provided that such claim has not been settled by payment previous to its examination by tribunal."

"This seems so satisfactory that I trust your Government will approve. Agreement must go before Senate 21st February."

\* Corrected version.

Delays would be fatal to passage of agreement now as they were in 1908, so I hope that your influence may be used to accelerate Newfoundland's action.

Enclosure 3 in No. 72.

SIR EDWARD GREY to Mr. BRYCE (Washington),

(No. 27.)

Foreign Office, February 16, 1911, 12.45 p.m.

Your telegrams Nos. 25 and 26 [Pecuniary Claims].

First paragraph of your telegram, No. 26, states that South African claims are to be excluded from first schedule. This is inconsistent with your telegram, No. 25. Is it correct, and, if so, are all Philippine claims, including duty claims, excluded also?

Of the South African claims the Union Bridge could probably be included in first schedule and we are endeavouring to secure inclusion of Brown, but the Colonial Office are raising difficulties about the latter on the ground that payment of adverse award in that case ought to fall on South African Government, which should therefore be consulted; it is impossible, therefore, for the moment to guarantee its inclusion. I gather that the smaller South African claims may not be pressed, and there is very strong opposition to the inclusion of Dietz and Reagan, and of claims arising out of the acts of the military authorities. You should therefore use every effort to get them excluded altogether, as well as Peter and Aronfreed. Please telegraph further details about Chamberlain claim, especially how and when first presented to His Majesty's Government.

Why is the Atlin claim excluded, and what are the other claims, as stated in your telegram No. 25, which are pressed by the United States, and on what grounds have you refused them?

Please also explain reasons for the "terms of submission" in your telegram, No. 26. Why are they necessary, and are they intended to form part of the Pecuniary Claims Convention, or are they intended to stand separately as a form of heading to the schedule? As at present informed, I see no necessity for them. They would tie the hands of the commission, and section 4 is open to objection: they add nothing but what might be arranged by the agents when the tribunal meets; and we shall have to obtain consent of Colonial Office, which will take some time.

5207

No. 73.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 17 February, 1911.)

SIR,

Foreign Office, February 17th, 1911.

I AM directed by Secretary Sir E. Grey to acknowledge receipt of your letter, 4152, of the 15th instant,\* enclosing the drafts of telegrams which the Secretary of State for the Colonies proposes to address to the Governments of Canada and Newfoundland respecting the selection and remuneration of the British Arbitrator on the Pecuniary Claims Commission.

Sir E. Grey concurs in the drafts, except that he considers that it might be desirable to give the Government of Newfoundland an opportunity of stating that they would be satisfied with a Canadian Commissioner for the Newfoundland claims.

He would, therefore, suggest, for Mr. Harcourt's consideration, that the words "British claims will be entrusted to Canadian Commissioner" should be inserted in the telegram to the Government of Newfoundland immediately after the words "owing to change in Commissioner" at the end of the third paragraph.

I am, &c.,

LOUIS MALLET.

\* No. 71.



5208

No. 74.

## FOREIGN OFFICE to COLONIAL OFFICE.

(Received 17 February, 1911.)

[Answered by No. 82.]

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—Mr. Bryce, Telegram 27, February 15, 1911: Pecuniary Claims Convention.

Foreign Office,  
February 17, 1911.

Enclosure in No. 74.

Mr. BRYCE to SIR EDWARD GREY.

[Amended Telegram.]

(Received February 15, 11 p.m.)

(No. 27.)

Washington, February 15, 1911.

Following sent to Governor-General of Canada to-day:—

"Pecuniary claims.

"First schedule now agreed to subject to approval of His Majesty's Government, your Government, and Newfoundland, in so far as concerns respective claims.

"It includes all following Canadian claims: Cayuga Indians, 'Coquitlan,' 'Favourite,' 'Wanderer,' 'Kate,' 'Nelson,' 'Canadienne,' all hay claims as listed to date, Canadian Electric Light Company, Great North-Western Telegraph Company, Cadenhead, Yukon lumber.

"Claims against Canada are only following fishery claims: 'Gerring,' 'Roy,' 'North,' 'Tattler,' 'Adams,' 'Hurricane.'

"United States Government pressed strongly for inclusion of Atlin, Samuel, and four other claims of fishery vessels, but we insisted on their unsuitability for this first schedule.

"This schedule includes all claims pressed by Canada, and no claims in which arbitration has not been assented to, and balance consequently much in favour of Canada.

"Though former communications of your Government have practically conveyed their assent, these arrangements should likewise be assured of your approval, and, if possible, by 18th February, as schedule must go to Senate early next week in order to pass this Congress.

"Text of general terms of submission accompanies this in separate telegram. It raises no points of importance but Canadian Government may wish to have cognisance of it."

5227

No. 75.

## FOREIGN OFFICE to COLONIAL OFFICE.

(Received 17 February, 1911.)

[See No. 82.]

SIR,

Foreign Office, February 17th, 1911.

I AM directed by Secretary Sir E. Grey to state that he has had under consideration your letter, 2893, of the 10th instant\* respecting the pecuniary claims negotiations.

With regard to the Brown claim, Sir E. Grey proposes that His Majesty's Government should argue before any tribunal to which it may be referred, that it has never been laid down that the conquering State takes over liability for wrongs

\* No. 69.

committed by the Government of the conquered country, this being the view expressed by the Law Officers in their report on the case, dated July 10th, 1903.\*

In these circumstances, it would be impossible for His Majesty's Government to admit that any liability now attaches to the Union Government. Sir E. Grey therefore thinks that the liability for an adverse award should be assumed by His Majesty's Government, and the Treasury will be at once approached on the subject by this Department.

It seems, therefore, to be unnecessary to make any communication to the Union Government on that point, unless Mr. Harcourt considers it advisable, as a matter of courtesy, to notify them that this claim will probably be referred to arbitration. Nor would it be necessary to approach them on the question of the appointment of a South African Commissioner.

Sir E. Grey would, however, be obliged if that Government could be requested to furnish His Majesty's Government with any assistance and information which may be required in the preparation of the answer to the United States case.

I am, &amp;c.,

LOUIS MALLET.

7993

No. 76.

## FOREIGN OFFICE to TREASURY.

(Received in Colonial Office, 11 March, 1911.)

[Answered by No. 87.]

SIR,

Foreign Office, February 17, 1911.

NEGOTIATIONS have been in progress with the United States Government during the last few years for the settlement of the outstanding pecuniary claims between Great Britain and the United States of America, and an agreement providing for the submission of such claims to arbitration was signed on the 18th August last (copy enclosed).†

Their Lordships will see that Article 1 of this agreement provided for the inclusion of the claims on either side in schedules. The agreement has not yet been ratified, because His Majesty's Ambassador at Washington reported that it was improbable that the United States Senate would accept the agreement without at the same time seeing the text of the first schedule of claims.

Mr. Bryce has been carrying on negotiations with a view to drawing up the first schedule during the last few weeks, and in his telegram, No. 25 of the 13th instant (copy enclosed),‡ indicated the claims on both sides which seemed suitable for inclusion. In a subsequent telegram§ (copy enclosed) he stated that it was provisionally agreed that the above claims should be included in the first schedule, subject to the concurrence of His Majesty's Government.

Five of the South African claims will certainly have to be excluded, but these are small claims of minor importance.

Before agreeing to the inclusion of the remainder, Secretary Sir E. Grey feels that there are certain claims [?] upon which it is essential that he should consult the Lords Commissioners of the Treasury. These claims are the South African claims of Brown and the Union Bridge Company, and the Webster claim.

The facts with regard to Brown's claim appear from the Law Officers' report of the 10th July, 1903 (enclosure).\* The amount of the claim is 2,012,284 dol. 60 c.

The Union Bridge Company's claim is £2,200. The exact facts of this claim have not been reported to the Foreign Office, but it is one for the contract price of bridge materials sold to the late Orange Free State Government in 1899.

The details of the Webster claim are set out in the accompanying memorandum|| (enclosure).

Their Lordships will remember that, in your letter of the 21st July last, they assented to the proposal that Sir E. Grey should agree to arbitrate the German claims of Plettner, Krüber, and the Hamburg underwriters. Those three claims raised the question whether a State annexing after conquest the territory of another

\* No. 194 in Volume VI. of Law Officers' Opinions. † Enclosure in No. 49. ‡ Enclosure I in No. 72. § Enclosure 2 in No. 72. || Memorandum (Confidential 8588): Webster, p. 23; Brown, p. 21.



State succeeds to the obligations of the latter in respect of unliquidated claims for damages. This question the Law Officers of the Crown had reported to be a legal question within the meaning of the arbitration agreement with Germany, and one therefore which His Majesty's Government were bound to submit to arbitration. The two United States claims of Brown and the Union Bridge Company raise the same point, and Sir E. Grey feels that His Majesty's Government would be exposed to much adverse comment if they refused to arbitrate with the United States of America, to whom they are bound by a similar treaty, a point which they had offered to arbitrate with Germany. The Lords Commissioners agreed that in the case of the German claims the liability for an adverse award should be regarded as an Imperial liability. Sir E. Grey hopes that they will be willing to adopt the same view with regard to these two United States claims.

The Secretary of State for the Colonies, in a letter of the 10th February\* (copy enclosed), has suggested that Brown's claim is one in which the liability, if any, should be borne by the Union Government, upon the ground that the liability should be regarded as "annexed to the territory."

Sir E. Grey is extremely anxious not to adopt this view. It would not only necessitate long correspondence with the Union Government, who would almost certainly repudiate responsibility, but their liability could only be put forward upon a ground which would be extremely damaging to Great Britain's contentions as against the United States, and would seriously weaken the British plea that it was not a claim in which any liability passed to Great Britain.

The reasoning that the liability was annexed to the territory and therefore passed from the Imperial Government to the Union Government would also imply that the liability passed with the territory from the South African Republic to Great Britain.

The claim of Brown, though large, is not one in the arbitration of which there would appear any serious risk. Apart from the difficulty of establishing the contention that the obligation had passed to His Majesty's Government on the annexation, it would also be necessary to show that the action of the Volksraad was not within its legislative competence. The Law Officers have reported that the claim should be resisted (copy of their report† is enclosed herewith).

It appears from the later telegram of Mr. Bryce's that the exclusion of these two claims (Brown and the Union Bridge) will inevitably entail the exclusion of the British claims arising out of the military operations in the Philippines during the Spanish-American war, which are between thirty and forty in number.

The Webster claim dates from 1841, and as such is clearly barred by Article 5 of the Claims Convention with the United States of the 8th February, 1853 (copy of this article is enclosed). The United States have, however, persistently pressed for its inclusion in the schedule.

Even if it were not barred by the above-mentioned article, the claim should fail upon the ground that Webster originally elected to have his claim dealt with upon the footing that he was a British subject, and it was dealt with accordingly. Apart from these objections the claim is wholly devoid of merit, so that the risk of submitting the claim to arbitration is not great.

The reason why the New Zealand Government maintain that liability for an adverse award should not fall upon them is that the claim originated out of transactions anterior to the grant of self-government.

The Secretary of State for the Colonies, though not prepared to accept the above fact as sufficient ground for not placing the liability upon the Dominion, has informed Sir E. Grey that, so far as he is concerned, the case shall be treated as an exceptional one and the liability of the Dominion will not be insisted upon. Sir E. Grey trusts that the Lords Commissioners of the Treasury will take the same view, seeing that Mr. Bryce has, on several occasions, reported that the inclusion of this claim in the schedule is essential to the acceptance of the agreement by the United States Senate.

Experience has shown that such United States claims, which have every appearance of being worthless, cannot be got rid of except by a Claims Convention. A mere refusal to entertain them only results in their reappearance at inconvenient moments, and they are made use of as grounds for refusing to settle British claims which are admitted by the United States Government to be perfectly good.

Sir E. Grey hopes that he may be favoured with an answer to this letter at the

\* No. 69.

† No. 60 in Vol. VI. of Law Officers' Opinions.

earliest possible date, as Mr. Bryce is pressing for the approval of His Majesty's Government in order that the schedule may be submitted by the 21st instant to the Senate, which goes out of office on the 4th March.

I am, &c.,  
LOUIS MALLET.

5493

No. 77.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 18 February, 1911.)

[Answered by No. 83.]

SIR,

Foreign Office, February 18th, 1911.

WITH reference to my letter of the 16th instant,\* I am directed by Secretary Sir E. Grey to transmit to you copy of a further telegram from His Majesty's Ambassador at Washington on the subject of the Pecuniary Claims Convention, and I am to request that you will inform Mr. Secretary Harcourt that the Lords Commissioners of the Treasury have been pressed to agree to the inclusion in the Schedule of the Brown, Union Bridge, and Webster Claims, and that Mr. Bryce will be authorised to include these claims on receipt of their Lordships' formal sanction.

Sir E. Grey trusts that Mr. Harcourt will use his influence with the Governments of Canada and Newfoundland to secure their acceptance of the Schedule, so far as they are concerned, and will at the same time invite them to communicate their decision to His Majesty's Ambassador direct as well as to His Majesty's Government.

As regards the proposed "terms of submission," I am to enclose copy of a further telegram to Mr. Bryce, and to say that Sir E. Grey would be glad to know what view is taken of them by Mr. Harcourt as well as by the Governments of Canada and Newfoundland.

I am, &c.,  
LOUIS MALLET.

Enclosure 1 in No. 77.

MR. BRYCE to SIR EDWARD GREY.

(Received February 17, 11 a.m.)

(No. 29.)

Washington, February 16, 1911.

Your telegram, No. 37 [of 16th February: Pecuniary Claims Convention].

Proposed Schedule includes at present all South African claims and all Philippine war claims. If we exclude all the former they will exclude all the latter. If we include Brown and Union Bridge it is just possible they may agree to leave in all Philippine war claims. They absolutely refuse inclusion of Philippine Customs claims in this Schedule.

Terms of submission: Section I secures in general terms submission of the point whether Webster is barred (see Colonial Office letter of 25th November, 1909). To effect this with special reference to Webster would provoke opposition in Senate.

No. 2 was intended to secure for our claimants full advantage of American admissions of liability in approved claims.

No. 3 admitted at request of United States Government because it seemed harmless if superfluous.

No. 4 was thought useful to save loss of time in unnecessary argument, since it has been understood no claim shall be stopped by either plea. This would prevent many claims being examined on their merits, including Rio Grande and many of our good shipping claims.

No. 5 suggested by United States Government as convenient for both sides.

\* No. 72.



If you think terms of submission better omitted and left to agents, we can urge this course subject to risk in case of Webster claim, and they may assent though proposals are theirs.

Terms were to remain distinct from convention and Schedule, but can be incorporated in the Schedule if you desire.

United States Government pressed for Atlin (see Colonial Office letter of 28th January, 1909), Samuel Clarke, and Robert Tarr claims against Canada (see enclosure in my despatch, No. 91, of 12th March, 1908). We objected mainly on the ground that these important claims had not been recently considered, and time [? was] insufficient to correspond with colony concerned. Same objection can still be taken to South African claims if necessary, but with result of excluding Philippine war claims.

For Chamberlain claim see list in despatch next above mentioned. It can probably be excluded. I will obtain and send details as to its presentation.

Enclosure 2 in No. 77.

TELEGRAM, No. 39, to Mr. BRYCE, Washington, February 18.

Your telegram No. 29. We must consult Colonial Office and Canada and Newfoundland about terms of submission to which we continue to see objections. I presume that the agreement and Schedule can be submitted to the Senate without them.

4152

No. 78.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Sent 5.20 p.m., 18th February, 1911.)

TELEGRAM.

[Answered by Nos. 86 and 119.]

Pecuniary claims. His Majesty's Government suggest, subject to concurrence of your Ministers, that British Commissioner for all claims other than those of Newfoundland and possibly one or two others should be Canadian Judge. In any case your Government will probably desire to appoint Canadian Judge to deal with claims by and against Canada, and His Majesty's Government would be glad to be able to entrust decision on other British claims to him. Payment proposed for Commissioners is 25 dollars a day, with travelling expenses, and 15 dollars for subsistence. His Majesty's Government would suggest that Canadian Government should pay amount equal to cost of one Commissioner. His Majesty's Government presume that Judge appointed would be willing to accept the allowances mentioned above in lieu of his ordinary salary.

If other Commissioner selected later for Newfoundland claims after hearing of other claims he would be paid at same rate by Newfoundland Government.

His Majesty's Government propose that they should themselves pay half cost of neutral commissioner and all other expenses connected with the Tribunal and appoint Agent and Secretary. This will not, of course, apply to expenses of counsel, for which Canada should be responsible in Canadian cases and Newfoundland in Newfoundland cases.

As regards neutral Commissioner, United States Government are not prepared to accept Dr. Lammach, and Secretary of State for Foreign Affairs is of opinion that Fromageot, a French lawyer, who is known to him as one of the delegates at the Second Peace Conference at Hague and at the International Naval Conference in 1909, should be suggested instead to the United States Government.

I shall be glad to learn at an early date whether your Ministers concur in these proposals, and, if so, whom they would nominate for appointment as Commissioner.—HARCOURT.

4152

No. 79.

NEWFOUNDLAND.

THE SECRETARY OF STATE to THE GOVERNOR.

(Sent 5.20 p.m., 18th February, 1911.)

TELEGRAM.

[Answered by No. 94.]

Pecuniary Claims Neutral Commissioner.

United States Government are unable to accept proposal that Dr. Lammach should be appointed, and Secretary of State for Foreign Affairs is of opinion that Fromageot, a French lawyer, who is known to him as one of the delegates at the Second Peace Conference and at the International Naval Conference in 1909, should be suggested instead to the United States Government. I shall be glad to learn at an early date whether your Ministers concur in this proposal.

I do not know yet whether there will be any claims by or against your Government to be dealt with by the Pecuniary Claims Tribunal. If there are such claims His Majesty's Government are prepared to arrange that your Government should nominate a Commissioner as a member of the Tribunal to deal with them.

In this case Newfoundland claims will have to be reserved to be dealt with last of all, owing to change in Commissioner. British claims will be entrusted to Canadian Commissioner.

It is proposed to pay Commissioners at rate of 25 dollars a day and travelling expenses, with 15 dollars subsistence allowance; and I have no doubt your Government will be prepared to pay expenses of a Commissioner if one is nominated by them to deal with Newfoundland claims.

His Majesty's Government propose that they should themselves pay half cost of Neutral Commissioner and all other expenses connected with the Tribunal, and they will appoint Agent and Secretary. This will not, of course, apply to expenses of counsel, for which your Government will be responsible as far as Newfoundland cases are concerned.—HARCOURT.

5493

No. 80.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL OF CANADA AND THE GOVERNOR OF NEWFOUNDLAND.

(Sent 7 p.m., 20 February, 1911.)

TELEGRAM.

[Answered by Nos. 81 and 84.]

(Paraphrase.)

Understand that His Majesty's Ambassador at Washington has telegraphed to you as to schedule of claims for Pecuniary Claims Convention and terms of submission. I hope your Ministers will find themselves able to concur and reply to Bryce as soon as possible. Please send to me by telegraph copy of reply to Bryce.—HARCOURT.

5908

No. 81.

NEWFOUNDLAND.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 5.10 p.m., 21st February, 1911.)

TELEGRAM.

[Copy to Foreign Office, 22 February, 1911. L.F.]

[Answered by No. 93.]

(Paraphrase.)

Your telegram 20th February.\* I have telegraphed as follows to Bryce:—

In reply to your telegrams of 14th February, 15th February, 18th February, my Ministers have no objection to form of schedule suggested by you, provided that it is clearly understood that their assent to form of



schedule is not to be taken as any admission of liability on the part of Newfoundland for any amount under any of the lists of claims forwarded up to date, and that at the contemplated arbitration Newfoundland will be in a position to object to every claim included in schedule and to set up every possible defence and answer.

The exact purport of Bryce's telegrams is not exactly understood by my Government and this is the reason of their reply.—WILLIAMS.

5208-

No. 82.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 89.]

Sir,

Downing Street, 21 February, 1911.

I AM directed by Mr. Secretary Harcourt to acknowledge the receipt of your letters of the 16th of February and of the 17th February,\* on the subject of the Pecuniary Claims Convention with the United States.

2. In reply, I am to request that you will inform Secretary Sir Edward Grey that Mr. Harcourt concurs in the inclusion in the first schedule of the pecuniary claims against Canada and Newfoundland on the assumption that these Governments now agree to the inclusion of the Webster claim against the Government of New Zealand and of the Fiji Land claims.

3. Mr. Harcourt concurs also, as was stated in the letter from this Office of the 10th of February,† in the submission to arbitration of the Union Bridge claim, on the understanding that the cost will fall upon the Imperial Government. With regard to the Brown claim, Mr. Harcourt consents that it should be included in the schedule on the understanding that if the Union Government should decline to accept responsibility in respect of it the Imperial Government will defray the cost, and that Sir Edward Grey will undertake to secure the consent of the Lords Commissioners of the Treasury to this proposal. A draft of a telegram‡ is enclosed which Mr. Harcourt proposes, with the concurrence of Sir E. Grey, to address to the Governor-General of the Union on the subject. Similarly, Mr. Harcourt will not press his objections to the inclusion of the Studer claim, but in view of the impracticability of making the Sultan of Johore pay any compensation awarded he is of opinion that any such compensation must be borne by Imperial funds.

4. Mr. Harcourt is unable to concur in the proposal to include in the schedule any of the other South African claims. In connexion with the claims of Dietz and Reagan, I am to refer you to the 6th paragraph of the letter from this Office of the 6th of January,§ in which the reasons against consenting to the arbitration of such a claim are briefly stated. With reference to the Aronfreed claim, I am to invite attention to the correspondence concluding with your letter of the 16th of November, 1906.|| This was a claim which was considered and rejected by the Central Judicial Commission, and it appears to Mr. Harcourt that the greatest possible difficulty would be created if claims decided by that body should be held liable to be re-opened. It will be seen from the report of the Commission, which is included in Parliamentary Paper [Cd. 3028], that it dealt with an enormous number of claims, and if one were re-opened His Majesty's Government would not be able to decline to re-open others. His Majesty's Government have, as a matter of fact, repeatedly declined, in replying both to individuals and to foreign Governments, to re-open any case decided by the Central Judicial Commission. The claim of Peter appears from the only particulars available in this Department, namely, those contained in the enclosure to your letter of the 26th of March, 1908,¶ to be a claim for unjust imprisonment during the Boer War and to be open to the same difficulties as those in the case of Reagan. The case of Chamberlain appears from the same authority to be due to the detention of goods at Delagoa Bay in 1899, and without further information Mr. Harcourt is not prepared to concur in its submission to arbitration. The Medeiros claim is, it will be remembered, not a Colonial claim at all (see the enclosure in your letter of the 31st of December, 1908\*\*).

\* Nos. 72 and 74. † No. 69. ‡ See No. 90. § No. 63. ¶ 42357: not printed.  
 ¶ No. 60 in Dominions No. 20. \*\* No. 145 in Dominions No. 20.

5. With regard to the Sierra Leone claims, the objections to the admission of the claim of the United Brethren Mission were fully stated in the letter from this Department of the 18th August, 1908.\* In deference, however, to the views expressed by Sir E. Grey in the letter from your Department of the 31st of August, 1908,† Mr. Harcourt is prepared to assent to the arbitration of this claim.

6. Mr. Harcourt is not aware of the existence of any other claim against Sierra Leone, except that of Daniel Johnson, particulars of which were requested in the letter from this Department of the 3rd of October, 1908,‡ but were not supplied because, as was understood from your letter of the 31st December, 1908,§ the claim had been dropped.

I am, &amp;c.,

C. P. LUCAS.

5493

No. 83.

COLONIAL OFFICE to FOREIGN OFFICE.

Sir,

Downing Street, 21 February, 1911.

I AM directed by Mr. Secretary Harcourt to transmit to you, for the information of Secretary Sir E. Grey, with reference to your letter of the 18th of February,|| copies of telegrams¶ which have been addressed to the Governor-General of Canada and the Governor of Newfoundland on the subject of the Pecuniary Claims Convention.

2. Mr. Harcourt assumes that Mr. Bryce will at once be asked to telegraph the terms of submission to the Government of Newfoundland if he has not already done so.

I am to add that, pending an expression of the views of the Canadian and Newfoundland Governments, Mr. Harcourt is not disposed to raise objection to the proposed terms of submission.

I am, &amp;c.,

H. BERTRAM COX.

5823

No. 84.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 7.30 a.m., 22nd February, 1911.)

TELEGRAM.

[Copy to Foreign Office, 24 February, 1911. L.F.]

[Answered by No. 93 and 104.]

Pecuniary claims. Your telegram 20th February.¶ Following telegram sent to His Majesty's Ambassador, Washington to-day:—

"Your telegram 15th February, pecuniary claims. Government of Canada agree to schedule, reserving terms of submission for further consideration."  
 —GREY.

5982

No. 85.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 22 February, 1911.)

[Answered by L.F. transmitting copy of No. 84.]

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary

\* No. 98 in Dominions No. 20. † No. 101 in Dominions No. 20. ‡ No. 112 in Dominions No. 20.  
 § No. 146 in Dominions No. 20. ¶ No. 77. ¶ No. 80.



of State, transmits herewith copy of the following papers: Mr. Bryce, Telegram 32, February 21; to Mr. Bryce, Telegram 42, February 22 (Pecuniary Claims Convention).

Foreign Office,  
February 22, 1911.

Enclosure 1 in No. 85.

TELEGRAM from Mr. BRYCE, Washington, 21 February, 1911.

(Paraphrase.)

No. 32. Pecuniary Claims. I have received assent of Newfoundland Government, who only stipulate against anything that would limit Colony's defence to any claim. I am hourly expecting assent of Canada.

I have urged the United States Government to drop the terms of submission and have induced them with difficulty to let them stand over till the second schedule.

It is most important that if possible the Convention and the schedule should go to the Senate to-morrow. If Canada agrees, may I sign the schedule now, reserving for further discussion both South African claims and Philippine war claims?

Enclosure 2 in No. 85.

TELEGRAM to Mr. BRYCE, Washington.

(No. 42.)

Foreign Office, February 22, 1911.

Your telegram, No. 32, of February 21, Pecuniary claims. His Majesty's Government agree to inclusion in first schedule of claims mentioned in your telegram, No. 25, of February 13, subject to assent of Canada in cases where the latter is concerned, viz., Cayuga Indians, Coquitlan, Favourite, Wanderer, Kate, Nelson, Canadienne, hay claims listed to date, Canadian Electric Light Company, Cadenhead, Yukon lumber, Rio Grande, Eastry, Lindisfarne, Newchwang, Sidra, Maroa, Philippine War claims, Hawaiian, Hardman, Wrathall, King Robert, Henning, four cable companies.

United States claims: Webster, Studer, Fiji, Sierra Leone (Mission claim), Medeiros, fishery claims against Canada and Newfoundland, Brown, Union Bridge.

If it is now too late to include Brown and Union Bridge and Philippine claims in first schedule you may reserve them for second schedule.

Dietze, Aronfreed, Peter and Reagan must, however, in any case be excluded.

6101

No. 86.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 11.2 p.m., 22nd February, 1911.)

TELEGRAM.

[Copy to Foreign Office, 24 February, 1911. L.F. See No. 97.]

[Answered by No. 111.]

Your telegram 18th February.\* Pecuniary claims. My Ministers advise selection of Chief Justice, Sir Charles Fitzpatrick, to deal with claims by and against Canada. Whilst it is not in my Ministers' province to advise as to other British claims, it may occur to His Majesty's Government that Sir Charles Fitzpatrick might equally be entrusted to deal with these claims. With regard to neutral commissioner, my Ministers will be pleased with the selection of M. Fromageot.—GREY.

\* No. 78.

7014

No. 87.

TREASURY to FOREIGN OFFICE.

(Received in Colonial Office, 4 March, 1911.)

Sir,

Treasury Chambers, February 22, 1911.

I HAVE laid before the Lords Commissioners of His Majesty's Treasury Mr. Mallet's letter of the 17th instant,\* informing them that negotiations have been in progress with the United States Government during the last few years for the settlement of the outstanding pecuniary claims between Great Britain and the United States of America, and that an agreement, copy of which was enclosed, providing for the submission of such claims to arbitration was signed on the 18th August last.

In reply I am to state, for the information of Secretary Sir E. Grey, that my Lords assent to the submission to arbitration of the three claims specially referred to, namely, the Brown, the Union Bridge Company, and the Webster claims, although they would have been glad if a longer time for consideration could have been given.

They think, however, that in the case of the Brown and Webster claims the question of liability as between the Imperial and the Colonial Governments should be reserved for the present. I am to add that there does not appear to be any necessity for making any communication on this point to the United States Government.

I am, &c.,

G. H. MURRAY.

7842

No. 88.

MR. BRYCE (WASHINGTON) to SIR EDWARD GREY.

(Received in Foreign Office February 23, 1911.)

(No. 44.)

Sir,

Washington, February 14, 1911.

THE negotiations for an agreement as to the schedule to be annexed to the convention signed last summer for the arbitration of pecuniary claims to-day reached a point at which it was possible to submit to you a proposal for settlement such as might form the basis of an agreement. The cable message sent you in my telegrams Nos. 25 and 26, of the 13th and 14th instant,† indicated the outlines of the agreement which had been reached by informal negotiation here, subject to your approval and that of the Governments of Canada and Newfoundland in so far as they are concerned.

Great difficulty has been experienced by Mr. Young, who has been dealing with Messrs. Anderson, Clark, and Lansing, acting for the United States Government, in getting these gentlemen to make definite proposals or do more than tentatively discuss the schedule, while perfecting their acquaintance with the whole subject. I have had myself more than once during the past week personally to urge Mr. Anderson to overcome the reluctance of his subordinates to undertake any definite responsibility, and in the final meeting to-day, at which I was present, a definite understanding was, to some extent, forced on the American negotiators.

Mr. Young had prepared a draft schedule, which had been submitted on our behalf as a basis of negotiation without prejudice. The scheme followed by this draft was the same as that of the schedule annexed to the draft convention in my despatch, No. 109A, of the 6th May, 1910.‡ The plan of amalgamating British and American claims, and arranging them together under different categories therein adopted, was again followed, and after some discussion accepted in principle by the Americans. It had the advantage of making it possible to produce a schedule which should not appear to give undue prominence to the claims of either party, though the British claims were, both in number and value, actually preponderant. While the American negotiators admitted that it was natural and not unfair that our claims should so predominate, they felt that it was necessary in this first schedule to avoid anything that might seem to depart widely from an equipoise, so as to preclude

\* No. 76.

† Enclosures in No. 72.

‡ Enclosure in No. 22.



hostile criticism in the Senate. It was further pointed out to them that, owing to their delay, it would be impossible to secure permission from any self-governing Dominions for the inclusion of claims other than those contained in our draft in time for submission of the first schedule to this Congress. If the Americans wished to add any claims to the schedule, as proposed by us, these would have to be claims affecting the Imperial Government.

This principle, which has the effect of barring those claims they were most anxious to get inserted, has been since maintained by us, to the exclusion of several claims urgently pressed by them, such as the Atlin mining claims and others. To other claims put forward we have raised the objection that, as they have not been recently enough considered to enable us to form an adequate judgment regarding them, they were not suitable for introduction at this present stage. Copy of a memorandum concerning certain claims against Canada of this character is enclosed. We have avoided throughout taking the ground which under recent treaties it is difficult to support of objecting to the arbitration of any claims; or of bargaining claim against claim otherwise than for the presentation of a reasonable balance in the schedule.

It was, however, evident from the first that no tactical handling of the schedules would enable us to get the admission of all our claims, unless we conceded something to them. Eventually we got from them a draft schedule embodying our draft with the addition of their South African claims, namely, the Brown, Union Bridge, Dietz, Chamberlain Medical Company (Mashona), Aronfreed, Horace Peter, and J. B. Regan; and thereupon Embassy telegram No. 25 of the 13th was sent indicating the outline of the possible agreement.

But even this definite step in advance was retracted by them this morning, when a communication was received to the effect that this draft schedule was not to be taken as a firm proposal, either to the claims in it or left out of it, and that further enquiry would be necessary into several important claims of ours included in our draft. It was, therefore, the more satisfactory that we were able in the ensuing final interview to-day to induce them to accept the draft obtained as above stated as a basis of discussion.

The discussion soon showed that the only serious difficulty centred in the South African claims. They insisted on their insertion as indispensable to the passage of the convention through the Senate, and as needed to maintain the balance between the parties. If these claims were to be excluded, they maintained that our corresponding claims—the Philippine war claims—must go out to avoid destructive Senatorial criticism. We tried unsuccessfully to give away the Hawaiian claims instead. Eventually, in view of the information contained in your despatch, No. 32, of the 28th January,\* it seemed worth while to refer this issue to you in my telegram No. 26 of to-day's date, as a satisfactory settlement had been reached in other respects.

In our draft proposal the claims of both parties were submitted to arbitration in terms suitable to the claims in each particular category. By this plan in the submission of the preliminary point as to the Webster claim (*i.e.*, whether it was barred by the Convention of 1853) hostile criticism would be less likely in the Senate on the ground of that claim being in a specially disadvantageous position. It was also intended by a similar procedure to take advantage for our claims of the many admissions of liability by American authorities. The American negotiators wished, however, to go further in this direction, and to make these special terms of submission general. This did not seem objectionable, and after much discussion the general terms of submission herewith annexed and cabled to you in my telegram above referred to were tentatively agreed on. As reported in my telegram, the object of these terms of submission is, in the first place, to provide clearly for the procedure of the tribunal in regard to such matters as the effect of the Convention of 1853 on claims such as the Webster claim, and to secure our claimants the full benefit of admissions of liability in "approved" claims; and, in the second place, to prevent undue delay. Such amendments as may be required will, no doubt, have been communicated to us by cable.

It will be observed that the claims are arranged under a simple classification in categories resembling those in the draft schedule attached to my despatch of last May above referred to, each of which now constitutes a distinct section of the schedule. The only object of this classification has been that of providing a means

\* Enclosure 2 in No. 67.

of balancing this first schedule, so as to permit us to get in as many claims as possible. As it has no other importance, and as this purpose is now fulfilled, it did not seem necessary to cable the classification. Should it be thought inconvenient it can be changed in subsequent schedules.

The proposed terms of submission and schedule have been submitted to Canada, and, as reported in my telegram, Newfoundland has been communicated with in regard to the fishery claims. I gathered from Sir Edward Morris, when he was recently in Washington, that his chief concern in regard to them was that the Colony should not be subjected to the expense of arbitration in regard to claims which it was willing to settle out of court in conformity with the deliverances of The Hague award. I hope that the provision proposed with this object may meet his approval. The claims against Newfoundland must, in so far as they are not either settled or specifically engaged to be settled by payment, be inserted in the first schedule, and they cannot be paid before the Congress expires, because evidence as to liability such as vouchers, &c., must first be obtained. This evidence is now being collected, and will be sent to Newfoundland as soon as possible. Meantime the Colony is in no way prejudiced by the insertion of the reference proposed.

It is much to be hoped that it may have proved possible to prevent delays which would wreck now, as the delays interposed by Newfoundland wrecked in 1909, the prospects of passage of this agreement.

I have, &c.,  
JAMES BRYCE.

Enclosure 1 in No. 88.

#### ADDITIONAL CLAIMS AGAINST CANADA.

The "Robert Q. Tarr" claim against Canada for condemnation of a vessel in 1870, for 17,601 dol. 10 c. This is a colonial claim, a large claim, and an old claim, and one which was not included in the revised list given by Mr. Root on the 13th April, 1908, and which therefore has not been under consideration during negotiations. It certainly, for these four good reasons, should not now be presented for inclusion in the first schedule, and to submit it to Canada would be to prejudice the passage of the agreement.

The other three claims: the two "Tarr" claims for the "Argonaut" and "Davy Crockett," of which the former is for 1,931 dol. 35 c.—a fine—and the latter 3,000 dollars—a seizure—and the "Chisholm," for the seizure of "Jonas French," also 3,000 dollars, were none of them included in Mr. Root's revised list of the 13th June, 1908. They consequently also have never been submitted to the Canadian Government, and should not be now insisted on under present conditions of pressure.

They can be submitted to Canada on the understanding that if the Dominion Government ask for more time to consider them, as they are obviously entitled to do under the circumstances, the schedule will not be thereby delayed.

On the other hand, we can put in the "Senator Saulsbury" (Hugh Parkhurst), which is omitted from their list but included in ours.

Enclosure 2 in No. 88.

#### GENERAL TERMS OF SUBMISSION.

Section 1. In the case of a claim originating prior to 1853, the arbitral tribunal shall, preliminary to a consideration of the legal principles involved and the merits of the claim, determine whether or not such claim is barred by the Convention of 1853. In case the arbitral tribunal determines that it is so barred, no further consideration of such claim shall be had, but the award shall declare such claim to be barred by the Convention of 1853.

Section 2. In the case of a claim in which liability has been admitted, and such admission has not been subsequently withdrawn, the arbitral tribunal shall limit its consideration to evidence relating to the amount claimed, and shall award an indem-



nity, if any, in accordance therewith, provided such claim has not been previously settled by payment of an agreed amount.

Section 3. In the case of a claim not coming within the class of barred claims, as set forth in Section 1, or within the class of admitted claims, as set forth in Section 2, the arbitral tribunal shall consider and decide:—

- (a) Whether or not there is any international liability in regard to such claim; and
- (b) If the foregoing question (a) is answered in the affirmative, what indemnity, if any, should be awarded.

Section 4. The inclusion of a claim in any of the following schedules shall operate as a bar to a plea in defence thereto that the legal remedies provided by municipal law have not been exhausted, or that the claim is now pending before a municipal tribunal of competent jurisdiction.

Section 5. The arbitral tribunal, taking into consideration any admission of liability, the nature of a claim and the equities involved, may add to the amount found due upon a claim, and include in the indemnity awarded interest on such sum as it may determine at a rate not exceeding 4 per cent. per annum for a period not to exceed the time elapsed between the presentation of the claim to any governmental authority and the confirmation of the schedule in which it is included.

#### Enclosure 3 in No. 88.

#### DRAFT SCHEDULE.

##### Section I.

##### *Claims based on Alleged Denial in whole or in part of Real Property Rights.*

##### *American.*

Webster.  
Studer.

##### *Fijian claims—*

Burt.  
Henry.  
Brower.  
Williams.

##### *South African—*

Brown.

##### *British.*

Cayuga Indians.  
Rio Grande.

##### Section II.

##### *Claims based on the Acts of the Authorities of either Government in regard to Vessels belonging to the Nationals of the other Government, or for the alleged wrongful collection or receipt of Customs Duties or other charges by the Authorities of either Government.*

##### *American.*

Fishing claims against Canada  
(Appendix (A) annexed).  
Fishing claims against Newfoundland  
(Appendix (B) annexed).

##### *British.*

"Coquitlam."  
"Favourite."  
"Wanderer."  
"Kate."  
"Lord Nelson."  
"Capadienne."  
"Eastry."  
"Lindisfarne."  
"Newchwang."  
"Sidra."  
"Maroa."

Hay claims (Appendix (C) annexed).

#### Section III.

##### *Claims based on Damages to the Property of either Government or its Nationals, or on personal wrongs of such Nationals, alleged to be due to the operations of the Military or Naval Forces of the other Government, or to the acts or negligence of the Civil Authorities of the other Government.*

##### *American.*

Sierra Leone claims—  
Home, &c., Society.  
Johnson.  
South African claims—  
Union Bridge Company.  
Dietz.  
Chamberlain Med. Company.  
Aronfreed.  
Peter, Horace.  
Reagan, T. B.  
Madeiros.

##### *British.*

Cable Company claims—  
Canadian Electric Light Company.  
Great North-Western Telegraph Company.  
Cuban Submarine Telegraph Company.  
Eastern Extension Cable Company.  
Philippine War claims (Appendix (D) annexed).  
Hardman.  
Wrathall.  
Cadenhead.  
Hawaiian claims (Appendix (E) annexed).

#### Section IV.

##### *Claims based on Contracts between the Authorities of either Government and the Nationals of the other Government.*

##### *American.*

##### *British.*

King, Robert.  
Yukon Lumber.  
Henning.

#### APPENDIX (A).

##### *Fishing Claims against Canada.*

"Frederick D. Gerring."  
"Teazer" (Gorton Pew).  
"North."  
"D. J. Adams."  
"Hurricane."

(Embassy note.—The above claims were all submitted to Canada in Colonial Office letter of the 14th August, 1908.\*)

"R. T. Roy."  
"Tattler" (Smith).

(Embassy note.—These two have also been assented to by Canada. See Embassy despatch, No. 56, of the 2nd March, 1909.†)

"Davy Crockett" (Tarr).  
"Argonaut" (Tarr).  
"Jonas H. French" (Chisholm).

(Embassy note.—These three will only be included if Canada has no objection. See Embassy memorandum to State Department annexed.)

#### APPENDIX (B).

*Fishing Claims against Newfoundland, to which the following proviso will be appended: "provided such claim has not been settled by payment previous to its examination by the Tribunal."*

Cunningham and Thompson (thirteen vessels).  
Davis Brothers (nine vessels).

\* No. 96 in Dominions No. 20.

† See p. 202 of Dominions No. 20.



Gardner and Parsons (five vessels).  
 Gorton Pew (five vessels).  
 Jordan and Merchant (fifteen vessels).  
 McDonald (four vessels).  
 Morton ("Horace Parker").  
 Parkhurst and Co. (four vessels).  
 Pew and Co. (five vessels).  
 D. B. Smith and Co. (twelve vessels).  
 D. B. Smith and Co., "Elector."  
 S. Smith and Co. (six vessels).  
 T. H. White ("Rapid Transit").  
 C. C. Young (three vessels).  
 C. C. Young, "A. E. Whyland."

Also

"Sarah B. Putnam."  
 "Thomas F. Bayard."

(Embassy note.—The above claims are included as submitted to Newfoundland in Colonial Office letter of the 14th August, 1908.\*)

"Arethusa."  
 "Athlete."  
 "H. A. Nickerson."

(Embassy note.—The above were included in list annexed to Mr. Bryce's despatch of the 2nd February, 1909,† but have been reserved.)

"Arkona."  
 "Columbia."  
 "Bessie M. Wells."

The above have also been reserved for further enquiry.

#### APPENDIX (C).

[This appendix will include as many Canadian hay claims as the Embassy has been notified of up to the date of printing the schedule.]

#### APPENDIX (D).

##### *Philippine War Claims (Foreign Office List).*

|                                      |                               |
|--------------------------------------|-------------------------------|
| Ackart.                              | Higgin, W.                    |
| Balfour.                             | Higgins, H. L.                |
| Broxup.                              | Hoskyn and Co.                |
| Cundal.                              | Kaufman.                      |
| Dodson.                              | Ker, Bolton, and Co.          |
| Fleming.                             | Launders.                     |
| Forbes.                              | McLeod.                       |
| Fox.                                 | McMeeking.                    |
| Fyfe.                                | Moore.                        |
| Grace.                               | Philippine Mineral Syndicate. |
| Grindod.                             | Pohang, Pak.                  |
| Hawkins, F.                          | Pohoomull.                    |
| Hawkins, J.                          | Smith, Bell.                  |
| Hendry.                              | Stevenson.                    |
| Hill.                                | Strachan.                     |
| Hogge.                               | Thomson.                      |
| Holiday.                             | Underwood.                    |
| Hong Kong Bank.                      | Warner, Barnes.               |
| Iloilo Club.                         | "Zafiro" (Young).             |
| Eastern Extension Telegraph Company. |                               |

\* No. 95 in Dominions No. 20.

† Page 184 of Dominions No. 20.

#### APPENDIX (E).

##### *Hawaiian Claims.*

C. W. Ashford.  
 M. Bailey.  
 F. Harrison.  
 G. Kenyon.  
 L. J. Levey.  
 A. McDowall.  
 T. W. Rawlins.  
 F. H. Redward.  
 W. F. Reynolds.  
 E. B. Thomas.

6234

No. 89.

#### FOREIGN OFFICE to COLONIAL OFFICE.

(Received 25 February, 1911.)

[Answered by No. 128A.]

SIR,

Foreign Office, 23 February, 1911.

I AM directed by Secretary Sir E. Grey to acknowledge the receipt of your letter, 5208, of the 21st instant,\* and to state that he concurs in the draft of the telegram which the Secretary of State for the Colonies proposes to address to the Governor-General of South Africa on the subject of the Brown and Union Bridge claims.

Mr. Harcourt will have observed from the telegram enclosed in the letter from this Department of the 22nd instant† that His Majesty's Ambassador at Washington has been informed that His Majesty's Government cannot consent to the inclusion in the schedules of the minor South African claims, namely, Dietze, Peter, Reagan, and Aronfreed.

As regards the Studer claim, Sir E. Grey proposes that consideration of the question of liability should be deferred until the award has been given.

If the Government of Johore are unable, in the event of an unfavourable award, to make any payment which may be required the question can then be discussed of providing the necessary sum from Imperial funds.

I am, &c.,  
 LOUIS MALLET.

5208

No. 90.

#### SOUTH AFRICA.

#### THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Sent 6.15 p.m., 23rd February, 1911.)

TELEGRAM.

[Answered by No. 123.]

In connection with preparation of schedule under Pecuniary Claims Convention, enclosed in my despatch 10th October last,‡ United States Government propose to include claims in respect of Union Bridge Company (see High Commissioner's despatch, No. 743, 2nd September, 1907)§ and in respect of Brown (see Secretary of State's despatch to Transvaal, 506, 15th August, 1905)|| In the case of the Union Bridge claim His Majesty's Government are prepared to apply the principles applied to cases of German claims and to undertake full responsibility (see my despatch, No. 206, 23rd September last¶), but the case of Brown appears to rest on different principles. Other claims arose from warlike operations conducted by His Majesty's Government, and His Majesty's Government have, therefore, treated them as

\* No. 82.

† No. 85.

‡ No. 55.

§ 33707: not printed.

| 27479: not printed.

¶ 25419: not printed.



Imperial liabilities; but claim of Brown, if valid at all, which I feel confident is not the case, is only binding on His Majesty as successor in sovereignty to late South African Republic. It seems equitable that liability, if any, should attach to His Majesty in respect of Transvaal, and I should be glad if your Ministers would consider whether they will accept the liability for any adverse award in this case.

It will be necessary in any case to let claim go to arbitration should United States insist that it shall be arbitrated, and if arbitration refused acceptance of treaty very doubtful.—HARCOURT.

6642

No. 91.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 28 February, 1911.)

[Answered by L.F. transmitting copy of No. 93.]

SIR,

Foreign Office, February 27th, 1911.

WITH reference to my letter of the 16th instant,\* I am directed by Secretary Sir E. Grey to state that he is informed that the following conclusions were reached after a discussion which took place on the 22nd instant between the legal advisers to the Colonial Office and to this Department with regard to the proposed terms of submission attached to the Pecuniary Claims Agreement with the United States.

Section 1. It was considered that no particular advantage would accrue from this rule, as the plea that the "Webster" claim was barred by the Treaty of 1853 might be raised without it. On the other hand, it did not appear that any disadvantage would accrue from its acceptance. The question was debated at some length whether this special rule about the Treaty of 1853 might be interpreted to mean that the parties do not intend to rely on the barring clause in the Treaty of 1871 in respect of any claim affected by that clause. It was not thought, however, that any such contention could be raised with success.

Section 2. This rule is explained in Mr. Bryce's telegram, No. 29 (copy enclosed in Foreign Office letter of the 18th instant†) as intended to secure for His Majesty's Government the full benefit of admissions by the United States Government of liability in the "approved" claims. It is not clear that there have been any such admissions. A mere recommendation of a claim to Congress does not constitute such an admission, nor does an undertaking so to refer it. Moreover, in some of the "approved" claims, liability has been distinctly repudiated. On the whole, it was considered that this rule had better not be accepted, nor did it appear that His Majesty's Government would gain anything by its adoption.

Section 3. It would, in the opinion of the Legal Advisers, be impossible to accept this rule without a clear understanding as to what meaning was attached to the words "international liability." If they mean liability according to international law, then the meaning is too narrow. Many claims which are believed to be good, such as those for refund of excess customs duties, can only with difficulty be said to be claims which the United States Government are bound to pay as a matter of international law. In its present form it was not considered advisable that the rule should be accepted.

Section 4. This rule is objectionable. When a claim is brought before the Commission the Arbitrators should be entitled to take into account all the circumstances and should not be debarred from considering the point that the claimant had legal remedies open to him of which he failed to make use. In the Studer case, for instance, it is important that His Majesty's Government should be able to urge strongly the contention that Major Studer persistently refused opportunities which were offered him of having the case dealt with in the courts of justice.

Section 5. This rule amounts to an invitation to the Commission to award interest in every case, but the Commission already has that power in cases where it considers the award of interest just, without the addition of the rule. Strictly interpreted, its effect would be to limit the power of the Commission to award interest because it confines the period for which it may be awarded within certain limits. On the other hand there appears to be no great harm in the rule, and, as it is believed that there are more good British than United States claims, it may be to the advantage of His Majesty's Government.

\* No. 72.

† No. 77.

Sir E. Grey concurs in the above views and, if the Secretary of State for the Colonies also agrees, he would be obliged if they could be laid before the Governments of Canada and Newfoundland and their observations invited.

I am, &amp;c.,

LOUIS MALLET.

6747

No. 92.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 1 March, 1911.)

[Answered by No. 99.]

SIR,

Foreign Office, February 28, 1911.

I AM directed by Secretary Sir E. Grey to acknowledge receipt of your letter, 2420, of the 14th instant,\* respecting the Pecuniary Claims Agreement with the United States, and to state that Sir E. Grey concurs in the terms of the despatch† respecting the Webster claim which the Secretary of State for the Colonies proposes to address to the Government of New Zealand.

I am, &amp;c.,

LOUIS MALLET.

6642

No. 93.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL OF CANADA  
AND THE GOVERNOR OF NEWFOUNDLAND.

(Sent 4.30 p.m., 3rd March, 1911.)

TELEGRAM.

[Copy to Foreign Office, 6 March, 1911. L.F.]

[Answered by Nos. 96, 102, and 108.]

Referring to your telegram, 21st February,‡ His Majesty's Government have carefully considered terms of reference proposed for Pecuniary Claims Convention, and consider, on the whole, that it is hardly desirable to accept them. As regards Section 1 the question whether claim was barred by Treaty of 1853 could always be raised without special provision. As regards Section 2 it is doubtful whether there have been any admissions of liability in full sense, and section does not seem to confer any clear advantage. As regards Section 3 term "international liability" might cause difficulties, for example, claims against United States for refund Customs duties can hardly be held to be a liability under international law. Acceptance of Section 4 is undesirable, as it should be open to arbitrators to take into consideration fact that legal remedies are not exhausted, or were not taken advantage of. Limitations as to interest in Section 5 are of little importance.

Shall be glad to learn if your Government have any views on these matters.—HARCOURT.

7309

No. 94.

NEWFOUNDLAND.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 7.10 p.m., 4th March, 1911.)

TELEGRAM.

[Copy to Foreign Office, 10 March, 1911. L.F.]

[Answered by No. 98.]

Your telegram of 18th February.§ My Ministers offer no objection appointment of Fromageot. The other suggestions contained in your telegram appear to my Ministers fair and reasonable.—WILLIAMS.

\* No. 70.

† See No. 100.

‡ Nos. 84 and 81.

§ No. 79.



7238

No. 95.

## FOREIGN OFFICE to COLONIAL OFFICE.

(Received 6 March, 1911.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following papers:—Mr. Bryce, Telegram 37, February 23, 1911: To Mr. Bryce, Telegram 60, March 3, 1911: Pecuniary Claims Convention.

Foreign Office,

March 4, 1911.

Enclosure 1 in No. 95.

Paraphrase of Telegram from Mr. Bryce, Washington, No. 37, dated February 23th, 1911.

Your telegram, No. 54, of February 27th.

I have pointed out to the United States Government that the Colonies and His Majesty's Government need more time for the examination of the proposed terms of submission, and have with considerable difficulty persuaded them on this ground to defer them. As shown in my telegram, No. 29, of February 16th, it was not we but the United States Government who proposed the terms, and I telegraphed them to you as soon as I received them. The understanding regarding the fourth section, to which you refer in your telegram, No. 54, of February 27th, is my understanding of the attitude of His Majesty's Government towards such a plea when put forward by Newfoundland in 1908, and of the consent of Canada to admit the Gerring Claim. The United States Government consider Section IV. important, and will endeavour to obtain something of the sort.

Owing to too late arrival of your telegram, No. 42, of February 22nd, Convention could not be submitted on February 22nd to the Senate Committee. I persuaded the United States Government to try to get the Committee to consider it this week, but the Committee refused to do so. There is now no chance of Convention going to the Senate till the opening of the extra Session.

I am still doing my utmost to persuade United States Government to sign the first schedule as agreed on, without the terms of submission, but they wish now to re-open both the terms and the first schedule, on the ground that only the necessity of getting your and the Colonies' acceptance in time justified their consent to conditions of which the balance is so much in our favour.

Despatch follows.

Enclosure 2 in No. 95.

Sir EDWARD GREY to Mr. BRYCE (Washington).

Foreign Office, March 3, 1911, 1 p.m.

No. 60. Your telegram No. 37 [of 28th February.]

Please let us know as soon as possible what additional American claims are likely to be put forward, so that we may consider without delay question of their inclusion; and send particulars of Daniel Johnson claim.

7456

No. 96.

## NEWFOUNDLAND.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 9.10 p.m., 6th March, 1911.)

TELEGRAM.

[Copy to Foreign Office, 10 March, 1911. L.F. See No. 107.]

[Answered by No. 98.]

Your telegram of 3rd March,\* in relation to fishery pecuniary claims. My Ministers do not clearly understand its bearing on Newfoundland claims. The

\* No. 93.

sections you have quoted all refer to Imperial or Canadian matters, and it would seem that your telegram of 3rd March refers to negotiations as to which I have not full information.—WILLIAMS.

7372

No. 97.

## FOREIGN OFFICE to COLONIAL OFFICE.

(Received 7 March, 1911.)

[Answered by L.F. transmitting copy of No. 98.]

Sir,

Foreign Office, March 6, 1911.

I AM directed by Secretary Sir E. Grey to acknowledge receipt of your letter, 6101, of the 24th ultimo,\* respecting the pecuniary claims agreement with the United States.

I am to suggest, for the consideration of the Secretary of State for the Colonies, that the Government of Newfoundland should be informed that the Canadian Government have advised the selection of Sir C. Fitzpatrick as Commissioner to deal with the Canadian claims and are agreeable to the appointment of Monsieur Fromageot as neutral Commissioner.

I am, &amp;c.,

LOUIS MALLET.

7456

No. 98.

## NEWFOUNDLAND.

THE SECRETARY OF STATE to THE GOVERNOR.

(Sent 6.25 p.m., 8th March, 1911.)

TELEGRAM.

[Copy to Foreign Office, 10 March, 1911. L.F. See No. 107.]

[Answered by No. 102.]

Your telegrams, 4th and 6th March.† Canadian Government also agree to neutral arbitrator, and it has been arranged that Sir Charles Fitzpatrick shall be Commissioner for Canadian claims.

My telegram, 3rd March,‡ referred to draft terms of submission which, I understand, were sent to you by Bryce. I agree that they do not seem to affect any existing Newfoundland interests, but I desire to consult your Ministers in accordance with the established practice in connection with treaties which bear in any way on Newfoundland interests.—HARCOURT.

41743/05

No. 98A.

## STRAITS SETTLEMENTS.

THE SECRETARY OF STATE to THE GOVERNOR.

[Answered by No. 125A.]

(Confidential.)

Sir,

Downing Street, 9 March, 1911.

WITH reference to the correspondence ending with your cypher telegram of the 24th of November, 1905,§ I have the honour to inform you that His Majesty's Government have now come to the conclusion that the case of Studer v. Johore must, as a matter of international policy, be submitted to arbitration. The claim has accordingly been included in the schedule to the Pecuniary Claims Convention which is now being negotiated with the Government of the United States of America.

\* L.F. transmitting copy of No. 86. † Nos. 91 and 96. ‡ No. 93. § 41743/05: not printed.



2. I have to request that you will inform the Sultan of Johore that His Majesty's Government have found it necessary to agree to the inclusion of the claim in the list of claims on which arbitration is to take place.

I have, &c.,  
L. HARCOURT.

6747

No. 99.

## COLONIAL OFFICE to FOREIGN OFFICE.

SIR, Downing Street, 10 March, 1911.  
I AM directed by Mr. Secretary Harcourt to acknowledge the receipt of your letter of the 28th ultimo,\* stating that Sir E. Grey concurs in the terms of the despatch which Mr. Secretary Harcourt proposed to address to the Governor of New Zealand on the subject of the Webster claim.

The despatch has accordingly been sent, on the assumption that His Majesty's Government accept liability for the claim in the event of an unfavourable decision being given in the case.

I am, &c.,  
C. P. LUCAS.

2420

No. 100.

## NEW ZEALAND.

## THE SECRETARY OF STATE to THE GOVERNOR.

(Confidential.)

MY LORD, Downing Street, 10th March, 1911.  
WITH reference to my despatch, Confidential, of the 28th of January, 1910,† I have the honour to request that you will inform your Ministers that His Majesty's Government have had under consideration the question of the liability of the Dominion Government in the event of an unfavourable decision being given in the Webster case by the Commission set up under the Pecuniary Claims Treaty with the United States.

2. I have not yet received the written statement by your Attorney-General, to which reference was made in your predecessor's telegram of the 24th of January, 1910,‡ but I do not think it necessary to delay any longer a decision in the matter. His Majesty's Government have always maintained the position, which they have no doubt that the New Zealand Government accept in principle, that when self-government is granted to any Colony, it is granted and accepted subject to all the obligations which were binding upon the Colony at the time when self-government was conceded.

3. They recognise, however, that there are strong objections to permitting this particular claim to go to arbitration, since there can be little doubt that it is one of those claims which are barred by the operation of the Convention of 1853. On the other hand, the United States Government lay stress on including the claim in the list of those to be submitted to arbitration, and I appreciate the readiness of your Government to consent to its inclusion. In all the circumstances of the case, and especially looking to the improbability of an adverse decision, His Majesty's Government are willing to regard the case as exceptional, and will undertake to discharge any liability which may arise from an unfavourable decision by the Commission.

5. At the same time, I observe from press telegrams that your Attorney-General is prepared to deal with the case if it should come up for discussion when he is in this country in connexion with other business, and I have no doubt that your Government will co-operate in providing any evidence or arguments which may be necessary in dealing with the matter.

I have, &c.,  
L. HARCOURT.

\* No. 92.

† No. 2.

‡ No. 1.

8298

No. 101.

## FOREIGN OFFICE to COLONIAL OFFICE.

(Received 15 March, 1911.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copies of the following papers:—Mr. Bryce, Washington, No. 44, February 14.\* To Mr. Bryce, No. 102, March 10: (Pecuniary Claims Convention).

Foreign Office,  
March 14, 1911.

Enclosure 2 in No. 101.

(No. 102.)

SIR, Foreign Office, March 10, 1911.  
WITH reference to Your Excellency's despatch, No. 44, of the 14th ultimo, I have to inform you that I have selected Mr. C. J. B. Hurst, C.B., Assistant Legal Adviser to the Foreign Office, to be the British Agent before the Pecuniary Claims Commission.

Pending the confirmation of the agreement it is not possible to complete this appointment, nor is it necessary to make any communication on the subject to the United States Government for the present, but I should be glad if Your Excellency would bear it in mind, and you will doubtless refer to me before entering into any arrangements with the United States Government connected with this Commission. This will ensure the agent being in a position to supervise the further developments of the Commission, which is, in my opinion, desirable. The agent will also act as counsel in regard to the claims for which special counsel are not employed.

I am, &c.,  
(For the Secretary of State),  
LOUIS MALLET.

His Excellency the Right Honourable  
James Bryce, O.M.,  
&c., &c., &c.

8288

No. 102.

## NEWFOUNDLAND.

## THE GOVERNOR to THE SECRETARY OF STATE.

(Received 4.45 p.m., 14th March, 1911.)

TELEGRAM.

[Answered by No. 121.]

Your telegram of 3rd of March, your telegram of 9th March,† in relation to pecuniary claims; my Ministers assent to suggestion made by you.—WILLIAMS.

8461

No. 103.

## FOREIGN OFFICE to COLONIAL OFFICE.

(Received 16 March, 1911.)

[Answered by L.F. transmitting copy of No. 104.]

SIR, Foreign Office, March 15th, 1911.  
WITH reference to my letter of the 14th instant,‡ I am directed by Secretary Sir E. Grey to transmit to you, to be laid before Mr. Secretary Harcourt, copy of a further telegram from His Majesty's Ambassador at Washington with regard to the Pecuniary Claims Convention.

You will observe that the United States Government now desire to reopen the schedule of claims and to include in it the claims of Dietz, Reagan, Aronfreed, and Chamberlain, as well as certain additional claims against Canada and Newfoundland. With regard to these latter, I am to express Sir E. Grey's hope that Mr. Harcourt will, if he sees no objection, urge the Governments of Canada and Newfoundland to agree to the inclusion of these additional claims.

\* No. 88.

† Nos. 93 and 98.

‡ No. 101.



The continued insistence of the United States Government upon the inclusion of the South African claims is engaging Sir E. Grey's serious attention.

I am, &c.,  
LOUIS MALLET.

Enclosure in No. 103.

Mr. BRYCE to SIR EDWARD GREY  
(Received 8 a.m., March 5, 1911.)

(No. 39.)

Washington, March 4, 1911.

Your telegram No. 60: Claims.

Notes exchanged to-day with United States Government officially record informal agreement as to claims reciprocally included in schedule as in my despatch No. 44. This has been as difficult to secure as original informal agreement, as, balance being much in our favour, they wished to begin *de novo*. Their note proposes inclusion of Dietz, Reagan, Aronfreed, and Chamberlain, and also following claims against Canada: Atlin, Clark, and four additional fishery claims; also six additional fishery claims against Newfoundland. They argue that, having admitted our Philippine war claims, which, in character and complications with other Powers, are similar to their South African war claims, and with much larger liability, we are bound in principle and equity to admit latter. The Chamberlain [claim] is for a "Mashona" consignment (see Foreign Office memorandum of February, 1906, p. 9).

I have sent copies of notes containing United States arguments as to other claims to Canada and Newfoundland Governments, and little or no difficulty need arise on these claims except as regards Atlin and Clark claims.

Full particulars will be sent to you by next mail. But in view of early extra session it is desirable to lose no time in endeavouring to arrange for inclusion on (sic: 1 of) these claims, to which United States Government appears to be entitled in principle and on grounds of equity.

8461

No. 104.  
CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Sent 2 p.m., 17th March, 1911.)

TELEGRAM.

[Copy to Foreign Office, 20 March, 1911. L.F.]

[Answered by No. 113.]

Your telegram 22nd February.\* Understand you have received from Ambassador request of United States Government for inclusion of Atlin, Clark, and four additional fishery claims in Schedule to Pecuniary Claims Convention. Hope your Ministers will see way to concur. Please telegraph their decision.—HARCOURT.

8461

No. 105.  
NEWFOUNDLAND.

THE SECRETARY OF STATE to THE GOVERNOR.

(Sent 3.30 p.m., 17th March, 1911.)

TELEGRAM.

[Copy to Foreign Office, 20 March, 1911. L.F.]

[See No. 129.]

Understand that Ambassador has communicated with you regarding desire of United States Government to include six additional fishery claims in Schedule to Pecuniary Claims Convention. Hope your Ministers will see way to accept this proposal. Please telegraph their decision.—HARCOURT.

\* No. 84.

8909

No. 106.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 20 March, 1911.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper: To Mr. Bryce, Washington, No. 108, March 17. Pecuniary Claims Convention: Conversation with United States Chargé d'Affaires respecting South African War Claims.

Foreign Office,  
[? 20] March, 1911.

Enclosure in No. 106.

(No. 108.)

SIR,

Foreign Office, 17th March, 1911.

THE American Chargé d'Affaires asked me on the 14th instant what the position was with regard to Germany's South African war claims. He heard it had been stated in Germany that we had refused to refer to arbitration certain of these claims.

I explained to him the difficulty of referring war claims to arbitration. We had now received a communication from the German Government and were expecting another giving more detail. We would consider these.

The United States also had some similar claims which had been discussed in connexion with the Pecuniary Claims Convention.

We were being very careful to treat in the same way all the South African war claims which were on the same footing: they differed from each other.

I am, &c.,  
(For the Secretary of State),  
LOUIS MALLET.

His Excellency

The Right Honourable

James Bryce, O.M.,  
&c., &c., &c.

9067

No. 107.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 21 March, 1911.)

[Answered by No. 112.]

SIR,

Foreign Office, March 20, 1911.

WITH reference to your letter, 7456, of the 10th instant,\* I am directed by Secretary Sir E. Grey to state that he would be glad to learn, before instructing His Majesty's Ambassador at Washington to propose to the United States Government the appointment of Monsieur Fromageot as neutral arbitrator, whether the Canadian Government accept the proposals of His Majesty's Government for the remuneration of the members of the Pecuniary Claims Commission.

These proposals were communicated to the Canadian Government in Mr. Harcourt's telegram of the 18th ultimo,† but the telegram from Lord Grey of the 22nd ultimo,‡ enclosed in your letter of the 24th ultimo,§ does not refer to that particular question.

Sir E. Grey would also be glad to know whether it is understood that the Government of Newfoundland wish to appoint a special commissioner for hearing the claims by and against Newfoundland.

I am, &c.,  
LOUIS MALLET.

\* L.F. transmitting copies of Nos. 96 and 98.

† No. 78.

‡ No. 86.

§ L.F.



9510

No. 108.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 7.3 p.m., 22nd March, 1911.)

TELEGRAM.

[Copy to Foreign Office, 24 March, 1911. L.F. See No. 125.]

[Answered by No. 121.]

Your telegram of 3rd March.\* Terms of submission under Pecuniary Claims Convention; my Ministers agree to views expressed in telegram referred to above.—GREY.

9553

No. 109.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 23 March, 1911.)

[Answered by No. 110.]

Sir, Foreign Office, March 1911.  
With reference to my letter of the 15th instant,† I am directed by Secretary Sir E. Grey to transmit to you herewith draft of a telegram which he proposes, with the concurrence of the Secretary of State for the Colonies, to address to His Majesty's Ambassador at Washington, informing Mr. Bryce that the Dietz, Peter, Reagan, Chamberlain, and Aronfreed claims must be excluded from the First Schedule to the Pecuniary Claims Agreement.

I am, &c.,  
LOUIS MALLET.

Enclosure in No. 109.

DRAFT of a TELEGRAM to MR. BRYCE, Washington.

Your telegram, No. 39. We have carefully considered the possibility of including in the first schedule the Dietz, Reagan, Aronfreed, Peter, and Chamberlain claims, but, as their admission would involve the arbitration of war claims of other countries which are still under consideration, we have reluctantly come to the conclusion that they must be excluded.

This will, no doubt, mean that the Philippine war claims will also be excluded.

9558

No. 110.

COLONIAL OFFICE to FOREIGN OFFICE.

Sir, Downing Street, 23rd March, 1911.  
In reply to your letter received on the 23rd of March,‡ I am directed by Mr. Secretary Harcourt to request you to inform Secretary Sir E. Grey that he concurs in the terms of the telegram which it is proposed to address to His Majesty's Ambassador at Washington regarding the exclusion of certain South African war claims from the schedule to the Pecuniary Claims Treaty.

I am, &c.,  
C. P. LUCAS.

\* No. 93.

† No. 103.

‡ No. 109.

9067

No. 111.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Sent 1 p.m., 24 March, 1911.)

TELEGRAM.

[Answered by No. 113.]

Your telegram, 22nd February.\* I should be glad to learn that your Government accept the proposals for the remuneration of the members of the Pecuniary Claims Commission suggested in my telegram of 18th February.†—HARCOURT.

9067

No. 112.

COLONIAL OFFICE to FOREIGN OFFICE.

Sir, Downing Street, 24 March, 1911.  
I AM directed by Mr. Secretary Harcourt to acknowledge the receipt of your letter of the 20th of March,‡ on the subject of the Pecuniary Claims Convention with the United States of America.

2. In reply I am to request that you will inform Secretary Sir Edward Grey that a telegram§ has been addressed to the Governor-General of Canada asking whether the Dominion Government accept the proposals of His Majesty's Government with regard to the remuneration of the members of the Pecuniary Claims Commission.

3. I am to add that Mr. Harcourt understands that the Government of Newfoundland would wish to appoint a special Commissioner for hearing the claims by and against Newfoundland if it is found ultimately necessary to refer any such claims to the Commission. As Sir Edward Grey is aware, it is the desire of the Government of Newfoundland to settle the claims by negotiation and thus avoid the cost involved by a reference to the Commission.

I am, &c.,  
C. P. LUCAS.

9787

No. 113.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 10.30 p.m., 24th March, 1911.)

TELEGRAM.

[Copy to Foreign Office, 29 March, 1911. L.F.]

Your telegram, 24th March,§ Pecuniary Claims. Minute of Council accepting proposals enclosed in despatch of March 22nd, No. 150,|| sent by mail yesterday.—GREY.

10465

No. 114.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 1 April, 1911.)

[Answered by L.F. transmitting copy of No. 121.]

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of

\* No. 86.

† No. 78.

‡ No. 107.

§ No. 111.

|| See No. 119.



State, transmits herewith copy of the following papers:—Mr. Bryce, Telegram 48, March 29/11: to Mr. Bryce, No. 89, March 31/11: (Pecuniary Claims Convention).

Foreign Office,  
March 31, 1911.

Enclosure 1 in No. 114.

TELEGRAM from Mr. BRYCE, Washington, March 29, 1911.

(Paraphrase.)

No. 48. Pecuniary Claims Convention. I should be glad to know if you approve the substance of the draft note enclosed in my despatch, No. 64, of March 4, in view of the approaching necessity of resuming negotiations with a view to submitting to the Senate the agreement and schedule.

I have forwarded by the last mail a suggestion by which the difficulty with regard to the South African claims can be deferred.

Please inform me as soon as possible of your views as to the amendments to the terms of submission suggested in my despatch, No. 77, of the 17th instant.

Enclosure 2 in No. 114.

TELEGRAM to Mr. BRYCE, Washington.

(Foreign Office, 31 March, 1911.)

No. 89 (R). Your telegram, No. 48 (of March 29). First two paragraphs of draft note to United States Government enclosed in your despatch, No. 64 (of March 4), approved. Will send observations on terms of submission as soon as possible, but they will require considerable amendment if we are to accept them.

I have not yet received your suggestion as to postponing difficulty connected with South African claims, but you will have learnt from my telegram, No. 81 (of March 23), that these claims must be excluded from first schedule, and the reason for it.

10466

No. 115.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 1 April, 1911.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—Mr. Bryce, Washington, No. 59, February 28: (Pecuniary Claims Convention.)

Foreign Office,  
March 31, 1911.

Enclosure in No. 115.

(No. 59.)

Sir,  
British Embassy, Washington, February 28th, 1911.  
It may be well to summarize what has passed here in regard to the Pecuniary Claims Convention since my despatch of 14th of February, No. 44, reporting the agreement reached with the State Department as to the first schedule. The despatches copies of which are annexed were also simultaneously addressed to the Colonial Governments, as it was impossible, except perhaps in the case of Canada, that these would arrive in time for consideration by the Governments concerned before the date at which the Convention and Schedule would have to go to the Senate in order to pass before the conclusion of the session. Full information as to the Schedule was telegraphed to you, and also to the Colonial Governments, in so far

as they were concerned, with the urgent request that they might, if possible, be approved by Tuesday, the 21st instant. The terms of submission proposed by the United States were also cabled to you and to the Dominion Government verbatim.

After some further telegraphic correspondence in the course of the week, it became evident that it would be possible to obtain the assent of the Governments concerned to the Schedule, but that the terms of submission desired by the United States (but to which we had never assented) would require further consideration. The United States Government were apprised of this, and urged to allow questions affecting the terms of submission to be left over in order to get the Convention and First Schedule before the Senate in sufficient time to be considered. After long discussion, and with much difficulty, they were persuaded to do so on the ground that the Governments concerned could not be expected to assent at such short notice to new proposals of this consequence. Thereupon the Dominion Government was so informed, and assented to the Schedule, reserving questions as to the terms of submission. The Newfoundland Government assented to the Schedule in a telegram copy of which is enclosed, provided it was left open to set up every possible defence and answer which practically precluded acceptance of Section IV. of the terms in the form proposed by the United States. My telegram, No. 32, of the 21st of February, was then sent, reporting the situation, and all preparations were made for submission to the Senate on Wednesday morning, the 22nd, as arranged. On Wednesday is the meeting of the Foreign Relations Committee of the Senate at which such questions are introduced by the State Department. Your telegram, No. 42, of the 22nd, was not, however, received until the Committee had risen.

As there were still ten days of the session left, it seemed just worth while still to try to avert the loss of so important a matter. Great pressure was, however, required to induce the State Department to agree to bring the matter up before the Committee at a special meeting; and I question whether even this would have been secured without the support privately obtained from Mr. Root. This was not due to any change of view on the part of the State Department as to the merits of the Convention or the advantage of its early passage, but to other causes. The relations of the Executive and the Senate had become strained from political causes. The majority of the Senate dislike the Canadian Reciprocity agreement, and the pressure exerted by the President on its behalf is resented. The Senate has, moreover, become disorganised, and is unable to cope with the mass of very controversial work it has allowed to accumulate. Accordingly, the State Department was disposed to fall back upon the chance of bringing forward this Convention at an extra session, thinking it impossible to get a fair consideration for it now.

Nevertheless, they ultimately consented to try what could be done with the Senate even at the last moment, a course I had desired because there was always a danger that if the matter went over, fresh difficulties would arise and the concessions we had won under pressure might be lost.

Accordingly the Secretary of State, on Saturday last, the 25th, asked the Senate to receive and fix a day for the consideration of the Convention. He was met, however, with an absolute refusal. Nothing, therefore, can now be done till the new Congress meets, be that in an extra session a month hence or not until December.

Since the 25th several discussions have taken place as to the best course to be followed without losing what has been so far gained; but the results attained are not yet sufficiently definite to report. I anticipate, however, that it will be necessary to agree upon terms of submission before the Convention is confirmed by notes, and that the United States Government will not be satisfied to leave this to the agents, as was, I believe, done in 1853. They have, moreover, reverted to the idea, from which they had been with difficulty driven, that all claims should be submitted in one schedule, and they seem specially anxious to secure the inclusion of the Clark and Atlin claims against Canada.

I hope that it may be soon possible for me to suggest a line of proceeding for the future conduct of this most complicated as well as tedious negotiation, after further consultation with the State Department. The purpose of the present despatch is merely to report what has recently passed. My experience has been that the difficulties are so great, between the demands made for inclusion and exclusion of claims, between the fears of the Senate entertained by the State Department on the one hand and the objections naturally raised by the self-governing Colonies on the other, that, although the State Department have been incessantly urged to go forward ever since the beginning of this year as well as last summer, progress can be secured only under the pressure of a fixed date before which an



agreement must be reached. Should there be an extra session, it will be possible to use that motive force during the next few weeks. Should there be no session till December, it will be hard indeed to prevent the State Department from letting things slide back once more into the phase of endless and futile bargaining of claim against claim.

I have, &c.,  
JAMES BRYCE.

The Right Honourable  
Sir Edward Grey, Bart., M.P.,  
&c., &c., &c.

(No. 25.)

MY LORD, British Embassy, Washington, February 15th, 1911.  
I HAD the honour to telegraph to you to-day the outline of an agreement reached yesterday with the United States Government as to the First Schedule of pecuniary claims to be submitted to arbitration under the Convention signed last summer. This schedule is to be annexed to that instrument and presented as a part of it to the United States Senate for acceptance at the earliest possible moment. My telegram dealt only with those points of the Schedule to the Convention in which Canada was especially concerned; but I now enclose herewith a copy of a despatch sent to His Majesty's Government by the Cunard mail to-day, which reports the matter in its entirety.

It will be observed that great efforts were made by the American negotiators to introduce into this First Schedule various claims, many of them against Canada and for large amounts. The largest were the Atlin mining claims, aggregating about \$2,000,000, and the Samuel Clark claim, dating from 1806, to 19,000 acres of land in Canada. We refused even to discuss the inclusion of these claims in this Schedule because they had both been eliminated from the 1908 and 1909 negotiations. They then urged the more strongly the inclusion of four claims concerning fishing vessels; arguing that as similar claims were already included in the Schedule, it would be convenient to complete the category. There is much to be said for this contention; and in the memorandum in regard to these claims enclosed in the despatch to His Majesty's Government it will be observed that while the absolute exclusion of the largest—that of the Robert A. Tarr for \$17,600—was insisted upon, in the case of the three others—the "Davy Crockett," the "Argonaut," and "Jonas French"—the concession was made that these should be submitted to your Ministers in case they should be willing to let them appear in this Schedule; but that if your Ministers thought that a further examination of them was required, they should go over to a later Schedule. A memorandum as to these claims and that of the "Senator Saulsbury" is annexed, and I should be glad to learn by telegraph whether your Government thinks it more convenient that they should be included in the First Schedule.

In the telegram above referred to, I have indicated the conditions of great urgency in which a decision on this matter must be arrived at if a fourth year of negotiation is to be avoided. The hardship upon British and Canadian claimants of the delay that has occurred, a delay in no way attributable either to Your Excellency's Government or to His Majesty's Government in London, has been a very heavy one, and it is important to lose no more time in setting the arbitral machinery to work. As the agreement now stands, it seems to contain nothing that should retard such a prompt decision as is required. If, as I hope, your Government is able to assent to it in the course of the week, I should be glad to be apprised at the earliest possible moment, and I have asked His Majesty's Government to inform me of their views by cable.

I have, &c.,  
JAMES BRYCE.

His Excellency the  
Right Honourable  
Earl Grey, G.C.M.G.,  
&c., &c., &c.

# ADDITIONAL FISHERY CLAIMS AGAINST CANADA.

## Memorandum given to United States Government.

The "Robert A. Tarr" claim against Canada for condemnation of a vessel in 1870 for \$17,601.10. This is a Colonial claim, a large claim, and an old claim, and one which was not included in the revised list given by Mr. Root on 13th April, 1908, and which, therefore, has not been under consideration during negotiations. It certainly for these four reasons should not now be presented for inclusion in the First Schedule.

The other three claims—the two Tarr claims for the "Argonaut" and "Davy Crockett," of which the former is for \$1,931.35, a fine, and the latter \$3,000.00, a seizure, and the Chisholm claim for seizure of "Jonas French," also \$3,000.00, were none of them included in Mr. Root's revised list of 13th June, 1908. They consequently also have not been recently brought to the attention of the Canadian Government in this connection, and should not be now insisted on under present conditions of pressure.

They can be submitted to Canada on the understanding that if the Dominion Government ask for more time to consider them, as they are obviously entitled to do under the circumstances, the Schedule will not be thereby delayed.

British Embassy,  
Washington.

# ADDITIONAL FISHING CLAIMS AGAINST CANADA.

1. "Davy Crockett" (Jas. G. Tarr and brothers).—Seizure for fishing [inside] 3-mile (Canada) limit with dories in 1890—\$1,951.25.
2. "Argonaut" (Jas. G. Tarr and brothers).—Seizure for fishing inside 3-mile (Canada) limit in 1887—\$3,000.00.
3. "Jonas H. French" (John Chisholm, owner).—Seizure for fishing within 3-mile limit off Nova Scotia coast in 1887.—\$3,000.00.
4. "Senator Saulsbury."—This claim has been erroneously listed by the United States Government in their latest draft Schedule as a Newfoundland claim. Information as to it was sent to Canada in Embassy despatch, No. 53, of 20th April, 1909. If there is no objection to its inclusion it would be convenient to add it to this First Schedule.

SIR, British Embassy, Washington, February 15th, 1911.

I HAVE had the honour to address to you two telegrams in regard to the agreement which has been reached here as to the first of the Schedules of claims for arbitration under the agreement signed last summer. As you are aware, this first Schedule is required to be added to and made a part of the Convention signed last August before that instrument can go before the United States Senate. Moreover, if ratification is to be secured before this Congress adjourns on March the 4th, the Convention and Schedule must go before the Senate early next week, say on or, if possible, before Tuesday the 21st.

In view of these conditions of extreme urgency every endeavour has been made to eliminate from the Schedule all matters which could cause delay. For this reason the claims against Newfoundland have been reduced to those which were included in the Colonial Office letter of 14th August, 1908, to Your Excellency's predecessor, and which have been before your Ministers since that date. The American negotiators pressed hard to obtain the inclusion of other later claims, but this has been successfully resisted. It was pointed out to them that your Government had unofficially expressed their intention to settle by payment before the arbitration proceedings began, all those claims in which liability was indisputable under the Hague Award, and in which satisfactory legal evidence should be produced of the amount of the claim as being one covered by the Award; and that, therefore, the inclusion of any claim in this first Schedule was in such cases merely *pro forma* in order to show that it would be in one way or another dealt with, and thus to prevent the Convention from being blocked in the Senate.

For further security it is proposed to insert a special provision showing that claims so paid off upon production of proper evidence before the arbitration begins



shall not come before the court. Eventually the Schedule was provisionally agreed upon as herewith annexed, and as telegraphed to you yesterday. It will be observed that in Section II. of the Schedule the claims against Newfoundland are inserted in general form, and that those listed in Appendix b, do not even include all those which have been before your Ministers since 1908. The special proviso as to payment, which I have referred to, seems to meet the views expressed here by your Prime Minister, and to meet every requirement of the case.

Copy of the terms of submission is also annexed as your Ministers may wish to have cognisance of it; though it is of no particular importance and contains nothing of especial interest to the Colony.

Further evidence in the form of certified copies of receipts, &c., in the case of all the claims against Newfoundland is now being collected, and will be forwarded as soon as possible so as to permit of those being paid off in which liability is accepted. But several weeks must elapse before this evidence is ready.

I trust that before Your Excellency will have received this, I shall have received an expression of the willingness of your Ministers that the Schedule should now go before the Senate. As all claims covered by the Hague Award obviously must be settled by arbitration unless settled privately before arbitration, there is no reason for delay, but indeed every reason why the questions arising out of the Award should be promptly disposed of. And I feel sure that Your Excellency's Government will be anxious to avoid any delay which might defer for another year or even indefinitely the satisfaction of the just claims of so many British subjects who are awaiting the passing of the Convention, in view of the fact that by the Hague Award and the special provisions of this agreement, the interests of Newfoundland have now been satisfactorily safeguarded and placed upon a solid and unassailable foundation.

I have, &c.,  
JAMES BRYCE.

His Excellency the  
Governor of Newfoundland.

TELEGRAM FROM THE GOVERNOR OF NEWFOUNDLAND TO MR. BRYCE.

(Dated February 20th, 1911, Received February 21st, 1911.)

P. The form of Schedule suggested by the Embassy is approved by my responsible Ministers subject to a clear understanding of the following points:—

The liability of Newfoundland for any sum claimed under any of the lists of claims hitherto received shall not be taken as admitted by Newfoundland by the fact of her assent to the form of Schedule; and Newfoundland reserves the right to set up every possible defence and answer to any claim included in the Schedule, and to raise objection to it before the Arbitral Tribunal at its proposed meeting.

10678

No. 116.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 3 April, 1911.)

[Answered by No. 121.]

SIR,

Foreign Office, April 1, 1911.

I AM directed by Secretary Sir E. Grey to transmit to you herewith a copy of a despatch from His Majesty's Ambassador at Washington respecting the pecuniary claims negotiations with the United States Government.

Several questions are raised by this despatch, two of which, namely, the South African claims and the terms of submission, are being dealt with in separate letters now being addressed to your Department.

You will also observe that some details are given about the claim of Daniel Johnson, which is stated to be for \$100,000, for loss of wife, children, and property during the disturbances in Sierra Leone in May, 1898.

Sir E. Grey considers that this information is as much as can reasonably be required from the United States Government, and it will, no doubt, enable the

Secretary of State for the Colonies to trace a full account of the circumstances in which the claim arose from the archives of the Government of Sierra Leone. It also appears clear that the claim is on the same footing as that of the United Brethren Mission, referred to in your letter, No. 5208, of February 21st last.\*

In the circumstances Sir E. Grey trusts that the Secretary of State for the Colonies will now consent to the inclusion of the claim in the schedule to be attached to the Agreement.

In view of the fact that it is hoped to present the Claims Convention and Schedule to the Senate when it meets on April 4th, I am to ask for a reply at your earliest convenience.

I am, &c.,  
W. LANGLEY.

Enclosure in No. 116.

MR. BRYCE TO SIR EDWARD GREY.

(Received March 17.)

(No. 64.)

SIR,

Washington, March 4, 1911.

In my despatch, No. 44, of the 14th February, I reported the tentative agreement reached by informal negotiation with the State Department as to the claims to be included on either side in the Schedule to be submitted with the Special Agreement to the Sixty-first Congress, and my subsequent despatch, No. 59, of the 28th February, explained the reasons why the Agreement and Schedule had failed to receive the assent of the Senate before the termination of that Congress on the 4th instant, and referred to the discussions then proceeding with the State Department as to the best course to be followed, so as to avoid losing the progress made.

As anticipated in that despatch, the calling of an extra session at an early date was of material assistance to us in resisting the inclination of the State Department to treat the Schedule as already informally agreed on under pressure of time for submission to the Sixty-first Congress now expired, as an agreement *ad hoc*, which might now be reconsidered *de novo*. We pointed out that the month at our disposal for further discussion was obviously insufficient to get all claims included in the first Schedule, and that the latter must remain as it was. After accepting this, they maintained that the balance of this first Schedule was so much in our favour, that although it might have passed the Senate in the stress of its closing week, it would not survive the more detailed examination it would now receive. Moreover, that our claims, except the Philippine Customs claim, which was of quite recent presentation, were admitted, including all Canadian claims without exception, whereas several of their most important claims which were, moreover, against Canada were not admitted. This would certainly cause objection to senators interested in the latter claims and not conversant with the spirit in which the Governments concerned were approaching the principle of arbitration in such matters. An assurance which the Department could quote should be given them that their claims would be included in some subsequent Schedule, or they should be put in a position to point to claims of ours also awaiting admission to such subsequent Schedule. They cited the South African claims, the Atlin and Clarke claims, and certain fishery claims against Canada and Newfoundland, as claims to the admission of which they were entitled in equity, and they pointed out that the admission of the Union Bridge and Brown on our side and of the Philippine war claims on their side would rather make the balance worse. Of course, no such assurance could be given them, and they were with much difficulty induced to agree to forgo this and agree formally to the Schedule as it stood, merely expressing the wish that their additional claims be added to it. Notes to this effect were accordingly prepared by us, discussed in draft, agreed to, and signed, and are herewith enclosed.

This constitutes the first and only official record of an agreement as to the specific claims to be arbitrated; and should we at any future time fail to agree on the admission of additional claims on either side, we shall be able to fall back on this agreement. While this would leave us in a very favourable position from the point of view of bargaining and adjusting a balance, and while such a failure to agree on

\* No. 82.



additional claims could scarcely in the long run prevent the Convention and Schedule going before the Senate as it stands, still it would not be prudent to rely too much on such a position or to exploit this advantage too far. The United States negotiators would not have let themselves be put at such a diplomatic disadvantage were they not relying on our giving practical effect in these details of contentious claims to our declarations of general adherence to the broad principles of international arbitration.

Moreover, their admission of the Philippine war claims does establish a claim in equity and principle to the admission of their South African war claims. The liability in both sets is similar, while the amount of that liability is very much more against them than against us; and this latter is not only true of the direct liability involved in the amount of the claims themselves, but also of the indirect liability in which they may be involved as regards similar claims of third parties. It might, of course, be possible to secure the omission of the South African claims against us by our consenting to drop the Philippine war claims; but, apart from the hardship which would thereby be inflicted on our claimants, a refusal by us to accept arbitration on their four small South African war claims would not only imperil the future of this arbitration, which has now with great trouble been brought to what we trust may prove to be a penultimate stage, but would prejudice our position generally in regard to the principle of international arbitration.

I hope that Canada may be disposed to take a favourable view of the possibilities of admitting the Atlin and the Clarke claims, and I enclose a copy of the despatch in which reasons are presented to the Dominion Government why they should do so.

The admission of the additional fishery claims need not, so far as can be conjectured, cause any difficulty or delay. It is only a question here of admitting the names of further claimants to a class of claims already admitted; such claimants having, moreover, for the most part been included in previous lists submitted to the Governments concerned. The additions on our side to the list of Canadian claimants for the refund of duties on hay are on a similar footing. I am submitting the additional "fishery" claims against Newfoundland together with the further particulars required by that Colony in the course of a day or two as soon as the information is received from the officials whom, at our suggestion, the Department have sent to Gloucester, Massachusetts. The despatch to Newfoundland will follow the lines of that to Canada, herewith enclosed, in so far as appropriate.

It will be observed that the American note resubmits formally the terms of submission, with an expression of readiness to consider amendments. I hope shortly to be in possession of your objections to their draft and also to learn generally the nature of the Canadian objections. If in the course of the month such progress towards an agreement on these points of difference can be made as gives reasonable promise of agreement and no objections are raised to the matter in principle, I am hopeful that presentation to Congress of the Convention and a first Schedule satisfactory to both parties would not be delayed for them. But to avoid all danger, efforts will be actively continued to reach an agreement satisfactory to you and the Colonies regarding the terms of submission.

There only remains the question as to the number and nature of the claims which either party may present for inclusion in the second Schedule. In so far as the embassy is informed all the claims we have instructions to present are included in the first Schedule with the exception of the Philippine Customs and some minor claims as listed herewith. The State Department have been given to understand privately that His Majesty's Government were not proposing to present either claims virtually dead or dormant for a long period or claims that were clearly bad, and they are now examining their lists with a view (as it is hoped) to adopting a similar policy. It seems desirable to obtain from them as soon as possible their list for the second Schedule, because if there are in it any claims which can be agreed to at once by us the inclusion of them in the first Schedule might help to getting it before and through the Senate, and the sooner we know of any difficulties impending in regard to the second Schedule the better we can steer our course to avoid them.

A copy of this despatch is being enclosed in the despatch to Canada and Newfoundland.

I enclose herewith a draft note to the United States Government, continuing the formal correspondence now initiated, and shall be glad to learn your approval of it or any alterations you may require by cable.

I also enclose memoranda by Mr. Young as to the claims above referred to, and

the details of the informal negotiations with the State Department now concluded. These have not been sent to Canada.

I have, &c.,  
JAMES BRYCE.

P.S.—As respects the old claims against the Southern States which disturb the rest of Southern Senators, I have kept them, so far, in reserve, in order to meet and counter any attempt on the part of the United States to press on us claims we deem inadmissible. A moment may arrive at which it might be necessary to let the Senate know that if His Majesty's Government forbear to press these claims, they do so not as dropping them but as desiring to accelerate a fair arrangement, and that this forbearance would have to be considered in arriving at such an arrangement as a concession made by us, in return for which we are entitled to expect a corresponding concession.

J. B.

Sub-Enclosure 1

Mr. BRYCE to Mr. KNOX.

SIR,

Washington, March 3, 1911.

THE informal negotiations which have been actively proceeding between the State Department and the Embassy, with a view to preparing a schedule of claims for submission to the Senate in the Sixty-first Congress, have resulted up to the present in an agreement on either side to include the following claims in the first Schedule:—

The United States Government agreed to include the following British claims:—

Cayuga Indians; Rio Grande; shipping claims (*vide* List (A)); "Hay" claims (*vide* List (B)); Cable Companies' claims (*vide* List (C)); Hardman, Wrathall, and Cadenhead claims; Philippine war claims (*vide* List (D)); Hawaiian claims (*vide* List (E)); and three contract claims (*vide* List (F)).

His Majesty's Government agree to include the following American claims:—

Webster, Studer, and Brown claims; the Fijian claims (*vide* List (G)); "Fishery" claims, against Canada (*vide* List (H)), and against Newfoundland (*vide* List (I)); the Sierra Leone claims (*vide* List (K)); the Union Bridge claim and the Medeiros claim.

In view of the imminent termination of the Sixty-first Congress without it having been possible to obtain the Senate's approval to the Convention, as signed in August, 1910, and to the first Schedule, I recognise the propriety of considering how far the Schedule already agreed upon can be enlarged so as to avoid future delay in regard to the other claims to be arbitrated.

In the first place it would seem desirable to bring within this agreement additional claims belonging to well-defined classes or categories of claims in which it has not yet been found possible to make the list of names and description of claimants complete. Such claims on the British side would be such hay claims as are not yet included. On your side there may, no doubt, be such claims to be added to the category of fishing claims already agreed on by the Canadian and Newfoundland Governments. I would, therefore, suggest that the first step should be an exchange of lists, which should as far as at present possible complete these two categories with a view to arranging the admission of these claims for arbitration. I would further request that in the list of claims against Newfoundland all details that can be supplied should be added, so as to permit that Government to deal immediately with such claims as it may think proper to settle in view of the findings of The Hague Award and the evidence of liability provided. It will be necessary for this purpose to have a detailed statement in the case of each claim as to how much is accountable to light or harbour dues, or to clearances, bonds, customs, fines, costs, and licences; or to consequential damages with details of the latter; also information as to the dates and places of payment, and, if possible, certified copies of the vouchers.

In the second place, it might be well to exchange views at an early date as to such other claims not specified above, which either party especially desire to arbitrate.



trate in order that, if possible, an agreement as to these may be secured before another opportunity occurs for ratifying the Convention.

I have, &c.,  
JAMES BRYCE.

Sub-Enclosure 2.

*List of Claims.*

*List (A): Shipping Claims.*—"Coquitlan," "Favourite," "Wanderer," "Kate," "Lord Nelson," "Canadienne," "Eastry," "Lindisfarne," "Newchwang," "Sidra," "Maroa."

*List (B): Canadian Claims for Refund of Hay Duties.*—Peter Anderson, Nathaniel Bachelor, Magloire G. Blain, Toussaint Bourassa, continuing partner of Bourassa and Forrester; Pierre Bourgeois, Willard Burland and Co.; Charles S. Rowe, surviving partner; Frederick Catndal, L. N. Charlebois, heir and assignee of Denis N. Charlebois; Joseph Couture, Wilfrid Dorais, heir of Louis T. Dorais; John and Francis Ewing, John Ewing, surviving partner; Joseph Jean Baptiste Gosselin, heirs of Joseph A. Lamoureux, deceased.

*List (C): Four Cable Companies' Claims.*—Cuban Submarine Telegraph Company, Eastern Extension Cable Company, Canadian Electric Light Company, Great North-Western Telegraph Company.

*List (D): "Philippine" War Claims.*—Ackaet, Balfour, Broxup, Cundal, Dodson, Fleming, Forbes, Fox, Fyfe, Grace, Grinded, Hawkins, F.; Hawkins, J.; Hendry, Hill, Nogg, Holiday, Hong Kong Bank, Iloilo Club, Eastern Extension Telegraph Company, Higgins, W.; Higgins, H. L.; Hoskin and Co., Kaufman, Ker, Bolton and Co., Launderers, McLeod, McMeeking, Moore, Philippine Mineral Syndicate, Pohang, Pohoomul, Smith, Stevenson, Strachan, Thomson, Underwood, Warner, "Zafiro."

*List (E): "Hawaiian" Claims.*—Ashford, Bailey, Harrison, Kenyon, Levey, McDowall, Rawlins, Redward, Reynolds, Thomas.

*List (F): British Contract Claims.*—King Robert, Yukon Lumber, Hemming.

*List (G): Fijian Claims.*—Burt, Henry, Brewer, Williams.

*List (H): Fishery Claims against Canada.*—"Frederick D. Gerring," "North," "D. I. Adams," "Hurricane," "Senator Saulsbury," "R. T. Roy," "Tatler" (Smith).

*List (I): Fishery Claims against Newfoundland* (to which the following proviso will be appended: "provided such claim has not been settled by payment previous to its examination by the Tribunal.")—Cunningham and Thompson (thirteen vessels), Davis Brothers (nine vessels), Garner and Parsons (five vessels), Gorton Pew (five vessels), Jordan and Marchant (fifteen vessels), McDonald (four vessels), Morton ("Horace Parker"), Parkhurst and Co. (four vessels), Pew and Co. (five vessels), D. B. Smith and Co. (twelve vessels), D. B. Smith and Co. ("Elector"), S. Smith and Co. (six vessels), T. H. White ("Rapid Transit"), C. C. Young (three vessels), C. C. Young ("A. E. Whyland"), also "Sarah B. Putnam," "Thos. F. Bayard."

*List (K): Sierra Leone Claims.*—Home and Foreign Missionary Society, Johnson.

Sub-Enclosure 3.

Mr. KNOX to Mr. BRYCE.

EXCELLENCY,

Department of State, Washington, March 4, 1911.

I HAVE the honour to acknowledge the receipt of your note of yesterday, regarding the preparation of a schedule of claims in accordance with the provisions of the special agreement of the 18th August, 1910, noting the claims against the United States and those against Great Britain which each Government has respectively agreed should be included in the first schedule, subject to the terms of the special agreement.

It is to be regretted that the pressure of business before the Senate at the present time, when a substantial agreement as to a first schedule has been reached, has caused an unavoidable delay in securing Senatorial action upon the special agreement. From this circumstance, however, there arises the opportunity to enlarge the first schedule, as you propose, by adding to it certain other claims before the agreement is submitted to the Senate, which proposal is acceptable to this Government.

While the claim against Newfoundland arising out of the controversy as to the meaning of certain provisions of the Treaty of 1818 are, by agreement, to be included in the first schedule, I note with satisfaction your statement that, in view of the award in the North Atlantic Coast Fisheries Arbitration, the Newfoundland Government intends to deal immediately with such claims as it may think proper to settle, when it is furnished with adequate proofs of liability. In order that such proofs may be speedily transmitted to that Government for its consideration, I have directed that detailed statements of these claims, with the possible exception of such as are based upon consequential damages, be prepared, and they will be delivered to you as soon as completed.

As a preliminary step in carrying out the plan to enlarge the first schedule, I will cause to be handed to you at an early date the additional claims belonging to well-defined classes or categories of claims in which it has not yet been found possible to make the list of names and descriptions of claimants complete, together with such other claims as this Government desires to have included in such schedule.

As to the general terms under which all claims are to be submitted, and which this Government considers to be a necessary preliminary to the submission of any schedule, I enclose the text of a draft of such terms, a copy of which was handed to you on the 14th February, 1911, and request that you furnish me with any suggestions or changes therein which you may desire to make.

I have, &c.,  
P. C. KNOX.

Sub-Enclosure 4.

MEMORANDUM prepared in compliance with Note of Secretary of State to Mr. Bryce, March 4, 1911.

The United States desires to have included in the first schedule of claims prepared pursuant to the provisions of the Special Agreement of the 18th August, 1910, the following:—

Fishery claims against Canada to be added to List (H) appended to the note of the British Ambassador of the 3rd March, 1911:—

"Davy Crockett," "Argonaut," "Jonas H. French," and "Robert A. Tarr."

Fishery claims against Newfoundland to be added to the List (I) appended to the note aforesaid:—

"Bessie M. Wells," "Elector," "Arethusa," "Arkona," "Harry A. Nickerson," and "Molloch."

It should be stated that the United States may, as a result of an examination which is now being made, find it necessary to present some other claims for insertion in Lists (H) and (I).

Besides the claims above set forth, the United States desires to have incorporated in the first schedule the Atlin mining claims, the Samuel Clark claim, the remaining South African claims, to wit, the Dietz, Aronfreed, Peter, and Reagan, and the Chamberlain Medicine Company claim.

All of these claims have been informally discussed in the recent negotiations and memoranda have been furnished showing the nature of each claim and the principles involved in their submission. In the Atlin mining claims, large numbers of citizens of the United States are interested and have been active in pressing them. The principle raised by this group of claims is similar in many respects to that involved in the Rio Grande claim, which the United States has consented to include in the first schedule. It would, therefore, be equitable upon principle that these claims should be submitted to the Arbitral Tribunal for decision if the Rio Grande claim is to be submitted, while their exclusion might be a serious embarrassment to this Government if the Rio Grande claim continues in the first schedule; and such a course would offer a not unjust ground for complaint by the persons interested in these claims, of which they would doubtless avail themselves.

In regard to the Samuel Clark claim, it should be noted that its origin is in the sale of lands held by members of the Iroquois Confederacy, an origin similar to that of the claim of the Cayuga Indians, which is among the claims to be included in the first schedule. The same possibility of embarrassment may arise in case this claim is excluded from the schedule, as in the case of the exclusion of the Atlin mining claims. As a matter of propriety as well as on principle, the Samuel Clark claim should be added to the claims already agreed to.

The omission of either the Atlin mining claims or the Samuel Clark claim might



reopen the whole subject of the first schedule and introduce a long and vexatious negotiation, which would be unfortunate, in view of the progress already made in reaching a satisfactory agreement as to the claims to be submitted to arbitration, while it might seriously delay the assembling of the arbitral tribunal—a delay which both parties desire to avoid.

The remaining South African claims above named originate from circumstances similar in a general way to those upon which the Philippine claims rest. While the particular principle involved in the respective claims may differ, they will be generally considered as belonging to some category or class of claims, and therefore they should receive reciprocal treatment in the preparation of the first schedule. Their exclusion, if the Philippine war claims are continued in the schedule, would form a ground for criticism, however just or unjust, similar to that which may reasonably be anticipated in the event of a failure to submit the Atlin mining claims and the Samuel Clark claim in the first schedule.

The claim of the Chamberlain Medicine Company, which has been fully set forth in a previous memorandum, is of a nature which needs no argument to establish the propriety of submitting it to arbitration, and there appear no substantial grounds for excluding it from the first schedule.

As the memorandum submitted upon the Samuel Clark claim might be construed to present a demand for the restoration of real property rights, it should be stated that the claim is for the purchase price, to wit, 90,000 dollars.

Department of State, March 4, 1911.

Sub-Enclosure 5.

MR. BRYCE TO GOVERNOR-GENERAL EARL GREY.

MY LORD,

Washington, March 4, 1911.

In my despatch, No. 25, of the 14th February, I had the honour to report an agreement reached *ad referendum* with the United States Government as to the claims to be submitted to arbitration under the Special Agreement of 1910 and included in the first schedule thereto, and after some telegraphic correspondence I received in reply the assent of the Dominion Government to the schedule as proposed.

The assent of His Majesty's Government, and of the Government of Newfoundland to the extent that it was concerned, having also been received by telegraph, the Special Agreement and schedule were brought up before the Senate Committee of Foreign Affairs in a special meeting on the 25th February. Owing, however, to the then disorganised state of the Senate, and to the great pressure of other business in the closing week of the session, it was found impracticable to proceed further before the Sixty-first Congress. The probability of an early extra session of the Sixty-second Congress was already great, and the chance of the passage in the expiring Congress was so slender as to make it prudent to avoid the risk of prejudicing presentation a few weeks hence.

In order, however, to put the matter in the best possible position for such presentation on the meeting of the Sixty-second Congress on the 4th April, negotiations were prosecuted, as reported in the despatch to the Foreign Office copy of which is enclosed, and the informal agreement already arrived at was put on official record.

As will be seen by reference to the above-mentioned despatch, this was not accomplished without considerable difficulty. Eventually the notes—copies of which are enclosed—were exchanged, which put the matter on a firm footing, and one which appears to make due and satisfactory provision for Canadian interests.

In so far as the latter are concerned, the situation can be summarised as follows:—All Canadian claims, some of them highly contentious, have been formally admitted by the United States Government to the first schedule, except those of the claims for the refund of duties on hay, which, for the reasons explained in the annexed memorandum (A), have still to receive assent. Similarly the United States Government have other claims which they wish to add to their "fishery" claims against the Dominion Government, as explained in memorandum (B). It would seem that no objection on either side could well be made to so supplementing, now that there is time to do so, the lists of claimants in classes of claims already scheduled as "hay" and "fishery" claims. But the total of these "hay" claims reaches such a large amount, and the list of claimants is so very long (at least 200) that the American negotiators further observe with some force that when they are all

admitted to the first schedule this schedule will be exposed to two formidable criticisms in the Senate, viz., that all claims of Canada against the United States have been admitted, whereas many claims of the United States against Canada have been left to wait for the second schedule, and that the total balance is heavily in favour of Canada. Under these conditions senators will demand an assurance that claims against Canada in which they are interested will not eventually be excluded from arbitration, and, failing such assurance, will refuse to sanction the arbitration. The State Department accordingly think that, in the interests of the arbitration itself, it would be well to include in the first schedule the Atlin and Clark claims against Canada, which are described in the memoranda attached to the note of the United States Government.

The Dominion Government has, I am aware, already expressed objection to the arbitration of the Atlin claim or claims; but this objection was taken at an early stage of the negotiation before the policy of arbitrating claims outstanding between the two Governments had received so full an expression as was given in the agreement signed last summer. Under the former Convention, extant when the objection was taken, only claims entered in the schedule were affected in their status. Those not specified remained *in statu quo ante*. Under the present agreement, however, all claims outstanding are affected, in that all are terminated one way or another except such few as are presented by one party and reserved by the other. These last, however, do not remain *in statu quo ante*; the fact of their formal revival and their being the sole survivors places them in a much more prominent position than that they hitherto have held. In view of the steady progress of the principle of international arbitration, it is most unlikely they would be allowed long to cumber the ground of international relations. Claims that are not arbitrated now will infallibly have to be arbitrated before long, probably by some less convenient and economical procedure. Should the Dominion Government continue to take exception to the admission of the Atlin claim to the schedule, there would appear to be other ways in which the United States Government might press for its reference to arbitration on grounds which it would be difficult or impossible to resist.

Moreover, inasmuch as, according to the minute of the Privy Council of the 1st January, 1909, the legislation on which this claim is based, can in no case form the basis of a pecuniary claim, then no practical liability is involved in arbitrating it, for, under any such provision as that contained in Section 3 (a) of the terms of submission, the claim would be immediately ruled out of Court.

This would seem certainly to be one of those claims which offer no serious risk in arbitration, and until so dealt with will continue to complicate and vex international relations.

The Clark claim has not before been formally submitted to your Ministers for admission. The amount involved is not great, some £18,000, and the claim itself is so musty that it does not seem to be one regarding which apprehensions need be entertained on our side.

It will be advisable to present the agreement, the first schedule, and, if possible, the terms of submission, to the new Congress, on its opening on the 4th April, as there is no possibility of estimating how long the session may last, and the probability is that it will be short. It would, therefore, seem desirable that the Dominion Government should give as early consideration as possible to the question of admitting these claims to the schedule.

In the interest of the settlement of this long-deferred matter, involving the interests of many British and colonial claimants whose demand for justice is strong, as well as in the interests of the principle of arbitration generally, it is to be hoped that, having regard to the arguments above stated and reviewed in my despatch to His Majesty's Government, the Dominion Government will find themselves able to assent to the admission of the claims referred to.

I have, &c.,  
JAMES BRYCE.

Sub-Enclosure 6.

MEMORANDA BY BRITISH EMBASSY, Washington.

(A.)—Memorandum respecting Canadian "Hay" Claims.

Claims for the refund of excessive import duties on hay, as first brought to the notice of the Embassy, were comparatively few in number, and there were no state-



ments of the amounts claimed. When the negotiations with the State Department as to the claims to be scheduled on either side were taken up in 1908 and 1909, it was necessary to have some idea of the liability involved, and after consultation with the firm of attorneys representing the claimants, it was estimated that the total liability would not exceed 100,000 dollars. It was on this estimate that the subsequent negotiations were based.

It later became evident that many possible claimants had not been communicated with, and efforts were made through the official channel and through law firms interested, with a view to complete the list. This has resulted quite lately in multiplying the claimants and amounts by ten and the liability by twenty. There are now about 200 names listed, and a rough estimate of the amounts claimed is not far short of 2,000,000 dollars.

When it became necessary to negotiate informally this present first schedule with the United States Government under great pressure of time, these claims were admitted by them in part under the proviso "as listed to date." This was thought the best way of expressing the situation for purposes of passage in the Senate. The list has, however, had to be limited for the present to a total liability of 100,000 dollars in conformity with the old estimate. In order that there might be no possible distinction between these claimants admitted and those left out, which might seem to prejudice the latter, the names were taken alphabetically from the principal list until the total was reached.

This is, of course, a provisional arrangement, and the complete list will be admitted by the American negotiators as soon as they are satisfied that claims of theirs will be admitted as a counterpoise to preserve that balance in the schedule which is essential to its passage in the Senate.

Washington, March 7, 1911.

(B.)—*Memorandum respecting United States Fishery Claims against Canada.*

The United States Government wish to add the following claims of fishing-vessels based on seizures for fishing within the 3-mile limit off Nova Scotia:—

| Vessel.               | Owner.             | Date. | Claim.               |
|-----------------------|--------------------|-------|----------------------|
| "Lizzie A. Tarr" ...  | Robert A. Tarr ... | 1870  | Del. c.<br>17,601 10 |
| "Davy Crockett" ...   | Jas. G. Tarr ...   | 1890  | 1,931 25             |
| "Argonaut" ...        | ...                | 1887  | 3,000 00             |
| "Jonas H. French" ... | John Chisholm ...  | 1887  | 3,000 00             |

It will be observed that the total liability is small—about £5,000; that the claims are so old that they will be very difficult to establish; and that they all belong to a class of claim already represented in the schedule.

Washington, March 7, 1911.

(A.)—*British.*

*Chamberlain Medicine Company.*—Claim for sixty cases of medicine shipped to Messrs. Gardner and Co., Delagoa Bay, South Africa, on British steamship "Mashona." Steamship detained by British authorities and medicines spoiled: Amount not specified.

*Horace Peter.*—Imprisonment as prisoner of war in 1901, and claim for compensation for 10,000 dollars' worth of property destroyed by British forces in South Africa: 10,000 dollars (property). Amount for imprisonment not specified.

*Thos. B. Reagan.*—Two claims. One arising in 1898 against South Africa, charging conspiracy of officials to deprive him of his rights. Second claim is against the British Government for illegal imprisonment at Johannesburg in 1900: 10,000 dollars (1st claim); 25,000 dollars (2nd claim).

*Joseph Aronfreed.*—Claim arising from alleged destruction or stealing of property by British soldiers at Kleinfontein, South Africa, in August, 1900: £2,516.

The following is similar information obtained at the request of the Foreign Office as to a claim already admitted as a "Sierra Leone" claim:—

*Daniel Johnson.*—Claim for loss of wife, children, and property, alleged to be due to insufficient police protection during a disturbance in Sierra Leone in May, 1898: 100,000 dollars.

(B.)—*Canadian.*

*American Claims to which assent is asked before April 4, 1911.*

*Atlin Mining Claims.*—These claims arose out of the attempt of a great number of American citizens to secure mining rights in the Atlin mining district of British Columbia under the general mining law in force at the time. After having been granted mining certificates, permitting them to prospect, locate, and develop mines under the general Act referred to, the British Columbian Legislature in 1897 passed an Act amending the General Mining Act in such a manner as to deprive these American citizens of the rights already acquired, or which might have been acquired, under the certificates issued to them if this amendment to the law had not been made: 2,000,000 dollars (approximately).

*Heirs of Samuel Clark.*—In 1784 a tract of land in the Province of Quebec was granted to the Six Nations of Indians by the Crown. In 1796 Joseph Brant, head chief of the Indians, sold a portion of this grant containing 90,000 acres to Joshua Y. Cozens, who shortly thereafter conveyed the land by deed to Samuel Clark, a citizen of the United States, for the consideration of 90,000 dollars.

On the 15th January, 1798, the Six Nations, through Chief Brant, released to the Crown all their interest and title to certain portions of the original grant, including the tract for which Clark held the deed. Subsequently the Crown, disregarding the deeds of Cozens and of Cozens to Clark, sold this tract to another party: 90,000 dollars.

Sub-Enclosure 7.

Mr. BRYCE to Mr. KNOX.

(Draft.)

SIR,

Washington, March , 1911.

I DULY forwarded to His Majesty's Government the notes exchanged between us under dates of the 3rd and 4th March, recording the agreement reached as to the pecuniary claims to be included by either Government in the first schedule to be annexed to the agreement of the 18th August, 1910.

I am now instructed to express the satisfaction of His Majesty's Government at the substantial progress made towards a final settlement of this complicated and difficult matter, and to urge on you the desirability of taking advantage of the summoning of Congress in special session on the 4th April to obtain the necessary action by the Senate on the special agreement itself and on the first schedule as now agreed on with such additions as may in the meantime have been assented to by the parties. In this connection I am to observe that His Majesty's Government note that no provision has yet been made for including the claims for refund of customs duties in the Philippines, and I am directed to ask for the inclusion of these claims.

In regard to the terms of submission annexed to your note, His Majesty's Government have instructed me to discuss with you certain alterations which they consider should be made. There ought to be no serious difficulty in reaching an agreement on the substance of these terms, but as the points of wording found to raise differences of opinion will have to be discussed with the Colonial Governments concerned, more time will probably be required than the month intervening before the assembling of Congress on the 4th April. If this should prove to be the case, His Majesty's Government would suggest that these terms of submission as finally agreed on might more conveniently and appropriately be annexed to the notes confirming the agreement to be exchanged between the Governments.

I have, &c.,

JAMES BRYCE.



## Sub-Enclosure 8.

MEMORANDUM by Mr. Young respecting Negotiations as to First Schedule

When the difficulties attending the negotiation of a general arbitration of outstanding pecuniary claims were first clearly realised some two years ago it became evident that the only way of making a satisfactory settlement, or, indeed, of making a settlement at all, would be by dividing the negotiation into three stages. The first stage should provide an agreement as to the principle and procedure of arbitration as far as possible. This agreement would facilitate the second stage of negotiations as to the highly contentious question of what should be arbitrated. This second stage settled, the most difficult question of what should not be arbitrated would become less of an obstacle than it had hitherto been, and, as a third stage, would hardly prevent conclusion of a question two-thirds settled. Besides this division of the difficulty, it was found well to sub-divide each stage into two processes—that of informal and formal negotiation. Agreements can be reached here over a table which would be quite unattainable by correspondence; as is best proved by the fact that it is as difficult to get understandings officially confirmed and formally recorded as it is to get them informally agreed to and put into effect.

The informal negotiation and formal confirmation of the special agreement last summer were the first stage; the informal negotiation of a schedule and its formal confirmation is now the second stage; the informal negotiation as to claims not to be presented or to be reserved and the formal closing of negotiations by the exchange of notes confirming the special agreement will be the third stage.

We are therefore now just coming out of the critical second stage, when any mistake in treatment might cause a bad relapse. The schedule has been formally confirmed by the notes exchanged and annexed, and the claims which it is reciprocally agreed to admit include all ours, except the Philippine Customs and some "hay" claims, which have special peculiarities, and none of theirs to which we have not withdrawn our objections.

But this is after all only an exchange of notes and not a binding obligation, and should not be overstrained. The State Department are not satisfied with their position under it, and it will be difficult, for various reasons, to hold them to the letter of it. They refused at first to confirm the informal agreement unless they were given assurances as to the eventual admission of their other claims. Unless our note had given them an opening to put these forward they would have insisted in so many words on their inclusion in the first schedule. The memorandum attached to their note almost does so insist, but the note does not, and if we should ever have to appeal to these notes it would be hard for them to do so. Our note, it will be observed, only suggests the addition to the schedule of additional claims belonging to well-defined classes of claims in which the list of claimants is incomplete—and such as additional "hay" or "fishery" claims—and merely proposes an exchange of views as to others. Their note, while recognising this distinction (an amendment of ours to their draft), proposes to add both categories to the first schedule. Our next move would be to point out the distinction, to claim admission of all the additional "hay" claims (say, 2,000,000 dollars) as against their additional "fishery" claims (say, 50,000 dollars) after getting Colonial assent to the latter. Then, this secured, to claim admission for the Philippine Customs, as against the "Atlin" and "Clark" and South African war claims. A deadlock would ensue on this, and the first schedule would be proceeded with much as it stands. But it is a question whether the tackle would hold, and much time, care, and skill would be wanted to prevent them breaking away. The note draft of which is enclosed for approval goes as far probably as is safe, and would not be presented until the propitious moment. Moreover, for the reasons stated in the despatch, the other claims they propose should in equity and on principle be admitted if practically possible. As one of the four lawyers engaged on their side observed:—

"We are willing to put in the Philippine war claims, knowing that our recognition of the principle of arbitration in regard to them will find a response with your people in London in regard to our smaller but quite similar South African claims; but as to your people at Ottawa, we feel we must hold up a few million dollars of hay claims as some security against them, having got all they want, giving us nothing more than the little we have."

The arguments for including the Atlin and Clark and details concerning them are given elsewhere. A point deserving consideration as to the former is whether, if the Dominion Government maintain their refusal, the United States Government

will not have it referred under Article 9 of the Boundary Questions Treaty. It will fall in any case under the General Arbitration Treaty, if it be remodelled now or merely revived for another five years next year, as in the latter case the notes as to exclusion of claims cannot well be renewed.

As to the Clark claim, in addition to the above, it is to be considered whether it could not be made an Imperial claim. It is analogous in every respect to the Webster claim, which is being dealt with as an Imperial liability, and this liability of £18,000 does not seem in any way formidable. As a concession to Canada the adoption of this claim might be made of great use in inducing assent of the Dominion Government to the Atlin claim.

It would seem that the schedule, as now agreed on, includes all claims which we have instructions to present except the Philippine Customs claims and the balance of the "hay" claims, the two small Customs claims of Messrs. Letts and Miss Clarkin, and the Hanserd claim, should it fail of settlement in court.

GEORGE YOUNG.

Washington, March 7, 1911.

10679

No. 117.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 3 April, 1911.)

THE Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies and, by direction of the Secretary of State, transmits herewith copy of the following paper: To Mr. Bryce, telegram, No. 92 (R), March 31: (Pecuniary Claims).

Foreign Office,  
April 1, 1911.

Enclosure in No. 117.

Sir EDWARD GREY to Mr. BRYCE (Washington).

(No. 92.) R.

Foreign Office, March 31, 1911, 5.20 p.m.

Your despatch No. 44.

I do not altogether favour the idea of arranging the claims in the schedule according to a classification of the nature of the claims, and though at this stage I do not wish to insist too strongly upon an alteration which may be unwelcome to the United States Government, it would, in my opinion, be preferable to confine the schedule to a mere list of the claims by name. Paragraph 3 of your despatch above referred to leads me to hope that the United States Government will not insist on the principle of classification, which is in many respects misleading, as many of the claims classified together are really in no way connected. It is possible, moreover, that such arrangement of the claims under descriptive headings may give rise to disputes and contentions that points not covered by the heading were intended to be excluded from the cognisance of the tribunal.

10680

No. 118.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 3 April, 1911.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—Mr. Bryce, telegram 50, March 31, 1911: (Claims Conventions.)

Foreign Office,  
April 1, 1911.



Enclosure in No. 118.

Mr. BRYCE to Sir EDWARD GREY.

(Received April 1, 9 a.m.)

(No. 50.) R

Washington, March 31, 1911.

Your telegram No. 89.

I hope it will be possible to send observations on terms of submission soon indicating how far amendments suggested in memorandum would meet needs of the case.

Your telegram No. 92.

If we meet them as to terms of submission, United States Government may accept your views as to dropping classification. But latter was, however, as explained in my despatches, deemed useful as tending to disguise in every [group undecypherable: ? way] as far as possible preponderance of our claims. I think that wording of agreement and terms of submission and powers of arbitration may be trusted to avert risk suggested, but I will ascertain United States view.

Your telegram No. 95.

Omission of four claims is an oversight which will be rectified

10714

No. 119.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 3 April, 1911.)

[Answered by No. 155.]

(No. 150.)

SIR, Government House, Ottawa, Canada, 22 March, 1911.

WITH reference to your telegram of the 18th February\* on the subject of the constitution and expenses of the Tribunal for the purposes of the Pecuniary Claims Convention, I have the honour to transmit, herewith, for your information, copies of an approved minute of His Majesty's Privy Council for Canada setting forth the views of my responsible advisers.

I have, &c.,  
GREY.

Enclosure in No. 119.

CERTIFIED COPY OF A REPORT OF THE COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY HIS EXCELLENCY THE GOVERNOR-GENERAL ON THE 14TH MARCH, 1911.

(P.C. 507.)

The Committee of the Privy Council have had before them a report, dated 6th March, 1911, from the Secretary of State for External Affairs, to whom was referred a telegraphic despatch, dated 18th February, 1911, from the Right Honourable the Principal Secretary of State for the Colonies, on the subject of the constitution and expenses of the Tribunal for the purposes of the Pecuniary Claims Convention.

The Minister states that, in the view of the Minister of Justice, Your Excellency's Government may very properly acquiesce in the suggestion to appoint a Canadian judge in respect of claims by and against His Majesty's Government and the Government of the Dominion or of other British Possessions as may be arranged; that the remuneration proposed of \$25.00 per day, with travelling expenses, and \$15.00 for subsistence is reasonable, and that this expenditure may be fairly undertaken by Your Excellency's Government, seeing that His Majesty's Government propose to pay the half cost of the neutral arbitrator, and all other expenses incurred by the tribunal, including those of agent and secretary.

The Minister observes that by Article IX. of the Convention "the expenses of the tribunal shall be defrayed by a rateable deduction of the amount of the sums awarded by it at a rate of 5 per cent. of such sums, or at such lower rate as may

\* No. 78.

be agreed upon between the two Governments, the deficiency, if any, shall be defrayed in equal moieties by the two Governments."

The Minister assumes, therefore, that the proposals of the Secretary of State for the Colonies with regard to the incidence of the expenses relate only to the deficiency, if any, after the application of the percentage agreed upon, but it would be advisable, before concluding an arrangement, to make enquiry of Mr. Harcourt in order to ascertain definitely his intention.

The Minister considers, moreover, that if the Canadian judge to be appointed shall act as arbitrator in respect of claims by or against any of the British Possessions other than Canada, those possessions should undertake the charge of his remuneration and expenses in respect of those claims.

The Committee, on the recommendation of the Secretary of State for External Affairs, advise that Your Excellency's Government consent to the appointment of M. Fromageot as neutral arbitrator, or umpire, under the convention.

The Committee, on the same recommendation, further advise that the Right Honourable Sir Charles Fitzpatrick, K.C.M.G., the Chief Justice of Canada, be nominated as the Canadian judge to be appointed.

The Committee further advise that Your Excellency may be pleased to inform the Right Honourable the Principal Secretary of State for the Colonies in the sense of this minute

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,

Clerk of the Privy Council.

10780

No. 120.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 3 April, 1911.)

[Answered by L.F. transmitting copy of No. 121.]

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—Telegram to Mr. Bryce, No. 96, April 1/11: (Pecuniary Claims Convention: "terms of submission.")

Foreign Office,

April 3, 1911.

Enclosure in No. 120.

Sir EDWARD GREY to Mr. BRYCE (Washington).

(No. 96.) R.

Foreign Office, April 1, 1911.

Your despatch, No. 77 [of 17th March: Pecuniary claims].

Following is text of amended terms of submission to which His Majesty's Government would agree:—

"In case of any claim being put forward by one party which is alleged by the other party to be barred by treaty, the commission shall first deal with and decide the question whether the claim is so barred, and, in the event of a decision that the claim is so barred, the claim shall be disallowed.

"2. The commission shall take into account, to such extent as they shall consider just, any admission of liability by the Government against whom the claim is put forward, or any failure on the part of the claimant to obtain satisfaction through the legal remedies which were open to him or which were placed at his disposal.

"3. The commission may include in its award in respect of any claim interest at a rate not exceeding 4 per cent. per annum for the period, or any part thereof, between the date when the claim was first brought to the notice of the other party and the confirmation of the schedule in which it is included."

These terms are being telegraphed to Canada and Newfoundland with instructions to telegraph their views direct to you as well as to His Majesty's Government.

In the meantime you may ascertain whether they would be accepted by the United States Government.



10465

No. 121.

THE SECRETARY OF STATE TO THE GOVERNOR-GENERAL OF CANADA  
AND GOVERNOR OF NEWFOUNDLAND.

(Sent 1.15 p.m., 3rd April, 1911.)

TELEGRAM.

[Copy to Foreign Office, 5 April, 1911. L.F.]

[Answered by No. 126.]

[Your telegram 22nd March] [Your telegram 14th March].\* Foreign Office have drafted following amended terms of submission in connection with Pecuniary Claims Convention:—

- " 1. In case of any claim being put forward by one party which is alleged by the other party to be barred by treaty, the Commission shall first deal with and decide the question whether the claim is so barred, and in the event of a decision that the claim is so barred, the claim shall be disallowed.
- " 2. The Commission shall take into account, to such extent as they shall consider just, any admission of liability by the Government against whom the claim is put forward, or any failure on the part of the claimant to obtain satisfaction through the legal remedies which were open to him or which were placed at his disposal.
- " 3. The Commission may include in its award in respect of any claim interest at a rate not exceeding 4 per cent. per annum for the period, or any part thereof, between the date when the claim was first brought to the notice of the other party and the confirmation of the schedule in which it is included."

I shall be glad if your Government will consider terms very carefully, and if you will send as soon as possible by telegraph intimation of their views to His Majesty's Ambassador at Washington, sending me a copy of your telegram.—  
HARCOURT.

11048

No. 122.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 5 April, 1911.)

SIR, Foreign Office, April 4th, 1911.  
WITH reference to my letter of February 27th last,† I am directed by Secretary Sir E. Grey to transmit to you herewith copy of a despatch from His Majesty's Ambassador at Washington respecting the "terms of submission" attached to the Pecuniary Claims Agreement with the United States Government.

For the reasons stated in that letter, in which, as you are aware, the Governments of Canada and Newfoundland subsequently concurred, Sir E. Grey would have preferred that no "terms of submission" should have been annexed to the Agreement. Moreover, as the Agreement was first proposed officially by the United States Government, it would appear to be the duty of that Government to justify such a modification as the "terms of submission" rather than of His Majesty's Government to amend them.

Seeing, however, that the United States Government apparently regard His Majesty's Government as committed to the "terms" in some form or another, Sir E. Grey decided to endeavour to secure their modification in such a manner as to render them innocuous, rather than to add to the difficulties of the negotiations by persisting in rejecting them altogether.

By arrangement with your Department a further conference of the assistant legal advisers to the two Departments was accordingly held at which the draft "terms" embodied in the enclosed telegram‡ were agreed upon.

\* Nos. 108 and 102.

† No. 91.

‡ Enclosure in No. 120.

In arriving at their conclusions the assistant legal advisers had before them the memorandum enclosed in Mr. Bryce's despatch, and were guided by the following considerations:—

Section 1. There is nothing in the Agreement which limits the power of either party to argue that any particular claim is barred by treaty, and the correspondence exchanged at the time showed clearly that His Majesty's Government were not willing to agree to remove that bar in the case of the Webster claim. The wording of the section should also be made applicable to claims barred by the Treaty of 1871 as well as that of 1853.

Sir E. Grey is advised that there is considerable doubt whether the statements with regard to the "Lord Nelson" and Cayuga Indians claims in the memorandum included in the despatch are well founded. It is quite possible that the commission may regard both those claims as barred by the Treaty of 1853, nor is there anything in the award of the tribunal under that treaty which would prevent the "Lord Nelson" claim from being now held to be so barred.

Section 2. No "admissions of liability" in any of the British claims, whether "approved" or otherwise, are to be found amongst the correspondence in the Foreign Office. Mere recommendations to Congress cannot, of course, be so regarded.

On the other hand, His Majesty's Government have admitted liability in the Medeiros claim, and have informed the United States Government that it is only a question of fixing the amount of the compensation. In the Fiji land claims also His Majesty's Government are handicapped by the fact that compensation has been paid to some German subjects on account of precisely similar claims, which is tantamount to an admission of liability.

Section 3. This section, when amended in accordance with the proposals in the memorandum enclosed in Mr. Bryce's despatch, would be superfluous, as it would mean nothing more than is already contained in Article 7 of the Agreement.

It is alleged that the view of the United States Government would undoubtedly be that the jurisdiction of commissions such as that proposed has always been limited to matters of international law.

It is not stated that this view is put forward with the authority of the United States Government, but it is not supported by the records of past commissions, e.g., the Commission of 1853 dealt with many cases of claims for the refund of Customs duties, a class of claims which are not, strictly so-called, claims of "international liability."

Section 4. No grounds are shown for altering the views contained in the letter from the Foreign Office of the 27th February\* with regard to that section. In the annexed telegram some parts of it are amalgamated with parts of Section 2 to form a new section.

Section 5 is re-drafted to avoid possible ambiguities.

In view of the above considerations the telegram† copy of which is now enclosed was sent to His Majesty's Ambassador at Washington with the concurrence of the Secretary of State for the Colonies, and Sir E. Grey understands that a similar communication has been made to the Governments of Canada and Newfoundland with the request that Mr. Bryce may be informed direct whether the terms of "submission" as amended are approved at Ottawa and St. John's.

I am, &c.,

LOUIS MALLET.

Enclosure 1 in No. 122.

(No. 77.)

SIR,

British Embassy, Washington, March 17th, 1911.

I HAVE received your despatch, No. 87, of 3rd March, conveying the objections raised by the legal advisers of the Foreign and Colonial Offices to the "terms of submission" which the United States Government desire to have appended to the Agreement signed last June for the arbitration of pecuniary claims.

Since this consideration of the matter the United States Government have further defined their views as to these terms of submission in the note copy of which was enclosed in my despatch, No. 64, of 4th March. It will be observed that this

\* No. 91.

† Enclosure in No. 120.



note states that an agreement on these terms is a necessary preliminary to the submission of any schedule. Although it may be possible to persuade them not to delay submission of the agreement and schedule until a final decision is reached as to the wording of the terms of submission, and the draft note to them submitted for your approval in my above-mentioned despatch contemplates this course, yet it will be much better to agree, if possible, at once, and not risk delaying submission, which should take place immediately on Congress opening. Further, unless other objections of a serious kind beyond those raised in the opinion of the legal advisers above referred to have since been taken to these terms of submission, there would seem to be no reason why an early agreement should not be reached. The United States note invites suggestions as to changes, and Mr. Anderson has indicated to me in a very recent conversation the willingness of his Government to discuss these in a frank spirit. Such amendments as those suggested in the enclosed memorandum as calculated to meet the objections raised, and to be proper for urging upon the United States Government, may possibly find prompt acceptance here. I would, therefore, venture to request that you should communicate with me by telegraph on the subject, indicating whether these suggestions are satisfactory and what further alterations and additions, if any, are required.

As I understand from the last paragraph of your despatch above-mentioned that the objections raised in the despatch have been submitted to the Governments of Canada and Newfoundland, I have thought it best, in view of subsequent developments and for the purpose of saving time, to address the enclosed duplicate despatch to these Governments.

The Right Honourable  
Sir Edward Grey, Bart., M.P.,  
&c., &c., &c.

I have, &c.,  
JAMES BRYCE.

#### TERMS OF SUBMISSION.

The United States Government have recently further defined their position as to these terms of submission. Originally they put them forward as advantageous and convenient; but they have now, in their note of March 4th, put them forward as "a necessary preliminary to the submission of any schedule." We might, however, possibly get this withdrawn, and the Agreement and Schedule submitted to the Senate alone, leaving the terms for further discussion. We should, however, only get this much by accepting in principle the negotiation of some such terms. Therefore, the point of view from which this matter must now be approached is not whether there is anything in the United States draft terms worth accepting, but rather whether there is anything in them worth objecting to.

Thereafter taking each section of the terms in turn:—

Section 1 makes special provision for a plea that claims originating prior to 1853 are barred. The opinion has been advanced that there is no advantage in this, as the plea can be raised in the "Webster" claim without it. No doubt the plea could be advanced without it, but the precedents indicate that the tribunal would, in the absence of such a provision, as this section, give such a plea no weight. The inclusion of this claim specifically by name in a subsequent compact of equal authority could not but be interpreted by the Commission as removing any bar set up by the Convention of 1853. It would be argued that if we considered the claim was barred we should not have agreed to its inclusion in the schedule. This was the view taken originally by the Colonial Office in their letter of 14th January, 1909, when they said "the inclusion of this claim would be a fatal blow to the important principle of the finality and sanctity of treaty obligations." It was also, no doubt, the view of the New Zealand Government when they agreed that this point as to the claim being barred alone should be submitted. Submission of this claim on its merits was indeed only acquiesced in as a necessary corollary and consequence of the submission of the point as to the bar. As we have apparently persuaded the New Zealand Government to submit this claim largely on the strength of its not being formidable in view of the Law Officers' opinion that it is barred, it is important that everything should be done to prevent our plea as to the bar being ruled out of Court.

The section is, moreover, altogether in our favour, for no claim of ours against them is concerned except the "Lord Nelson" and "Cayuga Indians." The "Lord Nelson" is safe from being barred by the award itself of the Commission of 1853.

The "Cayuga" claim is only concerned to a minor part of the claim, and is saved by the principle applied in the "Lord Nelson" case.

If it were thought desirable the section might be extended to provide also for the Treaty of 1871 by adding "or Treaty of 1871" to the words "Convention of 1853" and omitting those latter words at the end of the section.

Section 2, as already explained, was welcomed by us as securing for our claimants the benefit of admission by the United States Government of liability in the case of approved claims. The opinion has been expressed that this rule had better not be accepted, and that we gain nothing by its adoption, as it is not clear there have been any such admissions. It does not, of course, enable us to profit to the extent of precluding the United States Government from arguing, if they want to, the question as to liability, because of any previous admission of theirs as to their liability; if for no other reason, because the section gives them power to withdraw such admission. But where such admissions have been made on their side, as they have in many cases, and of varying degrees of formality, they will, under this section, either have to withdraw them and explain them away, the first being somewhat invidious and the second difficult, or they will allow them to stand, and much time and money will be saved to the Governments and private claimants concerned. A good case in point is the "Hemming" claim. In such a claim, if the admission is withdrawn, which it will not be, our representatives and the claimant are no worse off than if the section were dropped; if the admission is left standing both are much better off.

Further, none of our claims can be adversely affected. On the contrary, the section might be useful to us in this respect if the Newfoundland Government choose to admit formally liabilities in any of the fishery claims against them, as they have indicated their intention of doing in cases covered by the Hague Award and adequately proved. Under this section they would be safe against having large questions of vital importance to the Colony raised before this international tribunal in regard to any claim as to which they made such admission. The tribunal would then only be concerned in such cases with examining proofs of payments and assessing the amount of damages. This might be a great convenience and economy to the Colony as saving the lengthy attendance before the Commission of Government Counsel. The latter, having argued the claims in which liability was disputed, might safely leave the rest to the Commission.

Section 3. This section has little importance other than as being a necessary corollary and compilation of the two preceding. The only objection taken against it is that a restrictive interpretation might be put on the term "international liability" to the exclusion of claims in which liability is not "a matter of international law." This objection cannot well be put before the United States Government because they would undoubtedly reply that their view is that the jurisdiction of such commissions has always been limited to matters of international law, and that it should be made quite clear that this Commission will be so restricted. It would not do for us openly to take the line that it should not. The precedent might be a bad one, and we should probably anyhow be defeated. But whether they are right or no, this objection is sound in so far that it is in our interest in this matter to give as little support as possible in these terms to such a plea against the large claims we have exposed to it. But for this very reason it would be inadvisable to raise this point in any such way as might reopen the long and arduous controversy in regard to it when Article 7 of the Agreement itself was under negotiation, which was satisfactorily settled in our favour. (c. Enclosure 4 in Embassy despatch, No. 109, of May 6th, 1910.) The phrase used in Article 7 is "in accordance with treaty rights and with the principles of international law and of equity." This in itself would prevent any such restrictive effect as is feared being given to the very vague phrase "international liability." It is possible, as has been suggested, that in these words they read liability according to international law; but they have at present no good ground on which to make good such a view. While it is not very safe to try and better this wording, it can perhaps be done without raising the contentious point. They might be induced to expand these words into the words of the Agreement itself on the ground that it is better and clearer not to have two formulæ. Then the section will read:—

"Whether or no there is any liability under treaty rights or the principles of international law and of equity."



Section 4. This section will be unquestionably objectionable on general grounds if its effect be as suggested to preclude the arbitrators from taking into account the fact that the claimants have legal remedies open to them of which they did not make use. Although it would in practice probably tend more in our favour than against us, for it might save some important claims of ours, such as Rio Grande and Philippine Customs, from summary disallowal, and will probably not so much affect such claims against us as Studer and Webster, yet such an effect would be, as stated, highly objectionable in principle. It seems possible that the real intention was to prevent a claim being disallowed solely on this ground in application of the well-known principle of international law. To a provision of this nature there could presumably be no objection.

So amended the section would run:—

"The inclusion of a claim in the following schedules shall operate as a bar to the disallowal of the claim on the sole ground that," &c.

Section 5. No objection has been raised to this provision as to interest.

G. Y.

11028

No. 123.

SOUTH AFRICA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 11.45 a.m., 4th April, 1911.)

TELEGRAM.

[Copy to Foreign Office, 7 April, 1911. L.F. See No. 131.]

Your telegram of 23rd February;\* Pecuniary Claims Convention with the United States. Ministers inform me that they cannot advise acceptance of liability on behalf of Union Government for any adverse award in the event of Brown's claim being allowed to go to arbitration. They review circumstances of case in a long minute which I am forwarding by mail arguing that Brown and his representatives did not exhaust all means of redress in Transvaal Courts, and deprecating as undesirable precedent reference to international arbitration of claim by a foreigner merely because he was dissatisfied at decision of municipal Court, or was advised that he could not expect from such Court decision with which he would be satisfied.—GLADSTONE.

10680

No. 124.

COLONIAL OFFICE to FOREIGN OFFICE.

SIR,

Downing Street, 4 April, 1911.

I AM directed by Mr. Secretary Harcourt to acknowledge the receipt of your letter of the 1st instant,† on the subject of the Pecuniary Claims Convention with the United States, and to state for Sir E. Grey's information that Mr. Harcourt agrees to the inclusion in the schedule of the claim of Daniel Johnson.

I am, &c.,  
C. P. LUCAS.

11049

No. 125.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 5 April, 1911.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—Paraphrase, Telegram,

\* No. 90.

† No. 116.

No. 85, March 27: To Mr. Bryce, Washington; Pecuniary Claims: Terms of submission.

Reference to previous letter: Colonial Office, 9510, March 24.\*

Foreign Office,

April 4, 1911.

Enclosure in No. 125.

PARAPHRASE of TELEGRAM 85 to Mr. BRYCE, dated Foreign Office, March 27th, 1911, 4.15 p.m.

The objections of His Majesty's Government to the "terms of submission," as stated in my letter to the Colonial Office of February 27th, are shared by Canada and Newfoundland.

I mention this for your information and guidance in case the State Department should refer to the subject.

11335

No. 125A.

STRAITS SETTLEMENTS.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 5.20 p.m., 6th April, 1911.)

TELEGRAM.

[Answered by No. 148.]

(Paraphrase.)

With reference to your confidential despatch of March 9th,† Studer versus Johore, I presume that as no reference to the Sultan of Johore has been made in matter, it is the intention of His Majesty's Government to assume the entire responsibility in the matter and to satisfy any award without calling on Johore.

The Sultan of Johore will probably claim that under the Treaty of 1885 His Majesty's Government have no power to enter into agreement on his behalf without his consent. This was admitted by action in connection with extradition treaty with Siam.

If there is any intention of calling on Johore to satisfy any award, it must seriously prejudice our relations with Johore.

Before communicating with the Sultan of Johore, I should be glad to know whether I may state that no claim will be made on him in any event.—ANDERSON.

11589

No. 126.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 7.45 p.m., 8th April, 1911.)

TELEGRAM.

[Copy to Foreign Office, 11 April, 1911. L.F.]

Pecuniary Claims. Following is repetition of telegram sent to His Majesty's Ambassador at Washington to-day:—

Message begins: Minute of Council approved to-day accepts amendments of draft terms of submission in connexion with Pecuniary Claims Convention as contained in Colonial Office telegram, April 3rd.‡ Have repeated to Colonial Office: despatch follows by mail. Message ends.

—GREY.

\* L.F. transmitting copy of No. 108.

† No. 98A.

‡ No. 121.



10714

No. 127.

## COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by Nos. 146 and 152.]

SIR,

Downing Street, 8 April, 1911.

WITH reference to the letter from this Department of the 15th of February,\* I am directed by Mr. Secretary Harcourt to transmit to you, to be laid before Secretary Sir Edward Grey, the accompanying copy of a despatch† from the Governor-General of Canada enclosing a minute from the Canadian Privy Council setting forth the views of the Dominion Government regarding the constitution and the incidence of the expenses of the Tribunal under the Pecuniary Claims Convention with the United States.

Mr. Harcourt proposes, with Sir E. Grey's concurrence, to inform the Governor-General that the contribution by His Majesty's Government towards the expenses of the Tribunal will be subject to any deduction of the amounts recovered from claimants, but that it is not anticipated that these amounts will be very large; and that if any self-governing Dominion other than Canada utilizes the services of the Canadian judge as arbitrator, that Dominion will be expected to pay his remuneration and expenses in respect of those claims. Such payment will, however, not be claimed from any Crown Colony or in any case where the claim would be met from the funds of His Majesty's Government.

I am, &c.,  
C. P. LUCAS.

11838

No. 128.

## FOREIGN OFFICE to COLONIAL OFFICE.

(Received 11 April, 1911.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following papers:—Mr. Bryce, 87, March 23/11; to Mr. Bryce, telegram 107, April 10/11: Claims Convention.

Foreign Office,  
April 11, 1911.

Enclosure 1 in No. 128.

(No. 87.)

SIR,

British Embassy, Washington, March 23, 1911.

Your telegram, No. 81, of the 23rd instant informs me of the difficulties encountered in admitting the South African claims of the United States to arbitration in the first schedule, and anticipates their omission from it together with that of our Philippine war claims.

I gather from your telegram that the principal objection to including the South African claims in the first schedule is that this course would prejudice negotiations as to the arbitration with other countries of their outstanding South African war claims. Having no information upon the present position of these negotiations, I know too little to be able to offer an opinion. But the importance of including these American claims in the first schedule in order to avoid opposition in the Senate and the probable inevitability of their arbitration in some form—either under this agreement or under the new arbitration Treaty—prompts the suggestion that the possibility of finding some middle course be considered.

For instance, should His Majesty's Government think that the negotiations with other countries will issue either in an undertaking to arbitrate the claims referred or in a compromise settling those which might be deemed to set a precedent inconvenient in the case of the United States claims, it might be possible to secure the retention of our Philippine War claims in the first schedule, and also to avoid the danger of opposition in the Senate, by giving a confidential assurance that they

\* No. 71.

† No. 119.

should be arbitrated either under this agreement or the general treaty. I cannot, of course, guarantee that such an assurance would be kept confidential by the Senators, but, as it would not be the sort of information which newspapers try to extract, it is quite probable that it would not get out, and so would not affect any present or immediately pending negotiations with third Powers.

Perhaps the course of those negotiations may develop further before a final decision on this point becomes necessary. I am still waiting the answer of the Canadian Government on the Atlin and Clark claims. It is to be desired that their inclusion should be agreed to now, for it will be difficult, perhaps impossible, to prevent them and every other claim with a *prima facie* title from being sent to arbitration, and, in the long run, Britain and Canada have more to gain than the United States have by the universal application of the principle, because, when we are satisfied that a claim is just, we pay it; whereas the United States Congress can, in many cases, be driven only by arbitration to the payment of claims whose justice their Executive Government admit.

I have, &c.,  
JAMES BRYCE.

The Right Honourable  
Sir Edward Grey, Bart., M.P.,  
&c. &c. &c.

Enclosure 2 in No. 128.

Sir EDWARD GREY to Mr. BRYCE (Washington).

(No. 107.) R.

Foreign Office, April 10, 1911, 5.30 p.m.

Your despatch, No. 87 [of 24th March: Claims].  
No confidential assurance about South African claims can be given as proposed.  
Canada has been requested to admit Atlin and Clark.

11835

No. 128a.

## COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 137A.]

SIR,

Downing Street, 12th April, 1911.

I AM directed by Mr. Secretary Harcourt to acknowledge the receipt of your letter of the 23rd of February\* with regard to the Pecuniary Claims Convention with the United States of America.

2. In the 3rd and 4th paragraphs of that letter you stated that Sir E. Grey proposed that consideration of the question of the liability with regard to the Studer claim should be deferred until the award had been given, and added "If the Government of Johore are unable, in the event of an unfavourable award, to make any payment which may be required, the question can then be discussed of providing the necessary sum from Imperial funds."

3. Mr. Harcourt fears that when, in the letter from this Department of the 21st of February,† he expressed the opinion that, in the event of any compensation being awarded in respect of this claim, the cost must be borne by Imperial funds, he did not sufficiently make clear the very serious considerations affecting British interests in the Malay Peninsula which underlay that expression of opinion. The ability of Johore to pay compensation, if any should be awarded, is not the only point, or even the principal point, to be considered. The Sultan of Johore has consistently refused to regard this claim as a matter for arbitration, and will undoubtedly refuse to pay any compensation if the award is given against him. Johore is an independent State, except in so far as its independence is limited by the Treaty of 1885, and His Majesty's Government have no control over its finances. It would, therefore, be impossible to secure payment by the Sultan by any means which it would be practicable for His Majesty's Government to adopt. If the award of the arbitrators is in favour of the Studer claim, the compensation allowed must be provided from Imperial funds.

\* No. 89.

† No. 82.



4. There is, however, another aspect of the question which is of much more serious importance. As the interests of His Majesty's Government required that this claim should be included, it was, of course, necessary to arrange for its inclusion, in spite of the objections of the Sultan of Johore, but Mr. Harcourt had intended to instruct the High Commissioner to obtain His Highness's consent to the adoption of this course as soon as Sir E. Grey had informed him that arrangements had been made for the payment of any adverse award from Imperial funds, since an assurance that in no case would any expense fall upon the funds of Johore would probably have induced the Sultan to waive his objections. He fears, however, that as the claim has been included without any reference to the Sultan, whose status in this matter has been overlooked, this action will be construed as a slight to His Highness's dignity, and will be bitterly resented, not only by the Sultan of Johore but by the rulers of the Federated Malay States, on whose loyal support the satisfactory administration of the territories under British protection largely depends; and Mr. Harcourt cannot but contemplate with grave anxiety the prospect that the spirit of loyalty which has previously actuated these rulers will be replaced by an attitude of suspicion and obstruction.

5. He considers, therefore, that it is urgently necessary that all possible steps should be taken at once to guard against the danger of the Sultan learning, without any explanation from His Majesty's Government, that it is intended to submit the claim to arbitration. The only satisfactory course appears to him to be to inform the Sultan as soon as possible that His Majesty's Government have, for reasons of high policy, found it necessary to agree on his behalf to the inclusion of the Studer claim in the Schedule to the Convention with the United States of America, that in no circumstances will he be required to pay anything to the claimants, as His Majesty's Government assume all liability, and that, in view of the desirability of settling the terms of the Schedule at an early date, they have not consulted him previous to agreeing to the inclusion of the claim, being confident that, with his well-known loyalty to the British Government, he would have been ready to accept their view and would acquit them of any intentional discourtesy.

6. Mr. Harcourt trusts, therefore, that Sir E. Grey will inform him at an early date that arrangements have been made for the payment by His Majesty's Government of any adverse award, and will thus enable him to communicate with the Sultan in this sense before there is any possibility of his hearing of the matter from another source.

I am, &c.,

H. BERTRAM COX.

12695

No. 129.

NEWFOUNDLAND.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 10.15 p.m., 17th April, 1911.)

TELEGRAM.

[Copy to Foreign Office, 21 April, 1911. L.F. See No. 133.]

[Answered by No. 149.]

(Paraphrase.)

I have telegraphed as follows to Bryce:—

With reference to your telegram and your despatch my Ministers have sent me the following minute:—

"With reference to Mr. Bryce's telegram received on the 11th April,\* Ministers agree to include in the schedule to the Pecuniary Claims Convention the additional claims mentioned in His Excellency's despatch of the 28th March.† They agree also to the amended terms of submission contained in the telegram from the Secretary of State for the Colonies dated April 3rd,‡ excepting the paragraph dealing with interest.

\* Not received in Colonial Office.

† See No. 141.

‡ No. 131.

As regards the whole question, my Ministers clearly understand that their assent to the submission as amended, as well as to the schedule as amended, is not to be taken as an admission of liability on the part of the Colony, and that every possible objection may be raised by the Colony before the Commission."

—WILLIAMS.

13166

No. 130.

SOUTH AFRICA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 24 April, 1911.)

(Confidential, No. 4.)

SIR,

Government House, Cape Town, 5th April, 1911.

WITH reference to my telegram of the 4th April\* regarding the Pecuniary Claims Convention with the United States, I have the honour to transmit to you a copy of a minute from my Ministers on the subject.

2. It will be observed that Ministers make no reference to the claim of the Union Bridge Company, the omission doubtless being due to the fact that His Majesty's Government have undertaken full responsibility in regard to that claim.

I have, &c.,

GLADSTONE,

Governor-General.

Enclosure in No. 130.

(Confidential.)

(Minute, No. 367.)

Prime Minister's Office, Cape Town, 31 March, 1911.

Ministers have the honour to acknowledge the receipt of His Excellency the Governor-General's minute, No. 3/263, of the 8th March, covering a telegram dated the 23rd February from the Secretary of State for the Colonies with reference to a suggested arbitration between His Majesty's Government and the Government of the United States as to the claim of the late Mr. Brown.

2. Ministers have the honour to inform His Excellency that they cannot advise him to accept on behalf of the Union Government liability for any adverse award that might be given by the arbitrators in the event of His Majesty's Government allowing Mr. Brown's claim to be submitted to arbitration.

3. Ministers have the honour to point out that while the Union Government has succeeded to the obligations of the Government of the late Transvaal Colony, the latter Government, by despatch Transvaal, No. 732, of the 22nd December, 1902, from Lord Milner to Mr. Chamberlain, advised His Majesty's Government that it was unable to recognise Mr. Brown's claim, and to point out, further, that His Majesty's Government, from a letter addressed on the 11th August, 1903, to Mr. Blackstock (Mr. Brown's representative), appears to have endorsed the view taken by the Transvaal Government, and to have communicated its decision to the Government of the United States.

4. Ministers have the honour to submit that no facts have been brought to light other than those before His Majesty's Government and the Transvaal Government in 1902 and 1903, and that therefore there is no justification for a re-opening of the matter.

5. Ministers have, nevertheless, carefully considered the facts of the case as placed before His Majesty's Government and the Transvaal Government in 1902, and they now desire to state how those facts present themselves to them.

Mr. Brown's case, as put forward by his representatives, was that he had obtained a final judgment of the late High Court of the South African Republic declaring him to be entitled to licences for certain gold mining claims in the Trans-

\* No. 123.



vaal, or, in the alternative, to damages, that the issue of licences in a form which carried a right to renewal was wrongfully refused by the Republican officials, and that the High Court, constituted of different judges from those composing the Court which gave the judgment, unlawfully and corruptly refused to assist him in enforcing the judgment.

The claim of Mr. Brown's representatives first to intervention by His Majesty's Government and the Crown Colony Government of the Transvaal is based entirely upon *ex parte* statements that the judges who had pronounced judgment in his favour had been dismissed or forced to resign on account of that judgment, that the successors of those judges had been appointed under a pledge to prevent his enforcing the judgment, and that the dismissal of the application made by him to the newly-appointed judges was due to this alleged pledge.

Ministers can only state with regard to this, that in the records of the Republic at their disposal there is no evidence in support of these allegations, but even if those allegations were correct, Ministers are advised that according to the Roman-Dutch law and the practice of South Africa, Mr. Brown might have proceeded, on the ground of alleged malice or corruption on the part of the Court, for the review of the judgment dismissing his application. The answer of Mr. Brown's representatives to this is that he was advised that the Court was so constituted that it would have been impossible for him to have obtained this redress. Be that as it may, there was nothing to prevent Mr. Brown's representatives, after June, 1902, when the Supreme Court of the Transvaal Colony was constituted, from seeking similar redress or from bringing proceedings to enforce the final judgment given in his favour in 1897. Mr. Brown's representatives appear, however, to have preferred the expedient of endeavouring to move the newly-constituted Transvaal Government to grant redress by an Executive or Legislative act. In fact, they asked the Transvaal Government, upon statements the truth of which they say the Courts of the country could not test, to act arbitrarily in his favour and as against the then holders of the claims, a mode of procedure which he complains was followed by the Republican Government in 1897 and applied against him and in favour of those holders. Mr. Brown's representatives aver that it was impossible for the judges of the newly-constituted Supreme Court if he had taken proceedings before it to enter into the motives that had actuated their predecessors in dismissing his application in 1897. Such proceedings, Ministers are advised, were not impossible, and the result would have depended on the evidence which Mr. Brown's representatives were able to adduce. The difficulty, if any, appears to have lain in the fact that Mr. Brown's representatives were not in a position to place before the Court any evidence in support of the statements which they were ready to make to the Transvaal Executive in 1902. No doubt the obtaining of such evidence would have been difficult, and perhaps impossible. If Mr. Brown's representatives had obtained such evidence they might have brought it before the Court and so obtained a removal of whatever bar there was to the enforcement of the judgment obtained by Mr. Brown in 1897. If there was no such evidence, the Transvaal Executive was not entitled to take any special administrative or legislative action, and no body of international arbitrators would appear to be in any better position to decide the matter, for any evidence which could be placed before them to enable them to decide, could at the present time with greater convenience be placed before the Courts of the Transvaal Province.

To summarize: Mr. Brown in 1897 did not exhaust all forms of legal redress open to him, and in 1902 his representatives failed, and have since failed, to pursue the matter in the newly-constituted Courts. The refusal of the Transvaal Government and His Majesty's Government to take special administrative or legislative action was therefore to be expected. If that is so, it is difficult to follow why an international tribunal should be invoked.

6. Ministers assume that His Majesty's Government would always decline to submit claims to international arbitration if municipal courts exist, or have existed, capable of adjudicating upon the same, or if the claimant has not exhausted all means of redress in such Courts. Ministers submit that the claim of Mr. Brown's representatives falls within both these categories.

7. For these reasons Ministers would not feel justified in undertaking to satisfy the terms of any award that an international tribunal might make in the matter, and they further respectfully submit that an undesirable precedent would be created if a foreign Government could invoke international arbitration to determine a claim by one of its citizens merely because that citizen was dissatisfied

with the decision of the municipal Court upon that claim, or was advised that he could not expect from such Court a decision with which he would be satisfied.

LOUIS BOTHA.

13356

No. 131.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 25 April, 1911.)

[Answered by No. 137.]

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper: To Treasury, April 24, 1911: (Claims Convention: Brown claim).

Reference to previous letter: Colonial Office, April 7—11028/11.\*

Foreign Office,  
April 24, 1911.

Enclosure in No. 131.

SIR,

Foreign Office, April 24, 1911.

WITH reference to your letter of February 22nd last, I am directed by Secretary Sir E. Grey to transmit to you herewith copy of a telegram from the Government of South Africa respecting the submission to arbitration of the Brown claim.

In my letter of February 17th last, I explained that His Majesty's Government could not properly refuse to submit that claim to arbitration, seeing that they had already agreed to submit to arbitration certain German claims involving the same questions of principle. Nor could His Majesty's Government hold that the liability for an adverse award should be accepted by the South African Government, seeing that such a contention was directly opposed to the argument which would be employed before the tribunal, namely, that the liability could not be regarded as "annexed to the territory" now forming part of the South African Union. It was also explained that there was, as a matter of fact, little probability of an award adverse to His Majesty's Government.

By your letter referred to above the Lords Commissioners of the Treasury assented to the submission of the claim to arbitration, but reserved for future consideration the question of liability as between the Imperial and Colonial Governments.

On receipt of that letter, His Majesty's Ambassador at Washington was authorised to inform the United States Government that His Majesty's Government assented to the submission of the claim to arbitration.

The claim is one to which the United States Government attach much importance, and it is therefore clear that His Majesty's Government cannot now withdraw their consent to arbitrate it in spite of the views of the Union Government as expressed in the enclosed telegram.

Nevertheless, Sir E. Grey continues to feel strongly, for the reasons already given, that the liability for an adverse award is not one which should be borne by the Union Government.

He therefore trusts that their Lordships will now agree that it should be assumed by the Imperial Government.

The Secretary  
to the Treasury.

I am, &c.,  
LOUIS MAILLET.

\* L.F. transmitting copy of No. 123.



13492

No. 132.

CANADA.

THE GOVERNOR-GENERAL TO THE SECRETARY OF STATE.

(Received 25 April, 1911.)

(Confidential.)

SIR, Government House, Ottawa, 14 April, 1911.  
 WITH reference to my telegram of the 8th instant\* on the subject of the draft amended terms of submission in connection with the Pecuniary Claims Convention, I have the honour to transmit herewith, for your information, copies of the approved minute of His Majesty's Privy Council for Canada upon which my telegram was based.

I have, &c.,  
 GREY.

Enclosure in No. 132. .

CERTIFIED Copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 8th April, 1911.

(P. C. 740.)

The Committee of the Privy Council have had before them a report, dated 5th April, 1911, from the Secretary of State for External Affairs, to whom was referred a telegraphic despatch, dated 3rd April, 1911, from the Right Honourable the Principal Secretary of State for the Colonies, transmitting draft amended terms of submission in connection with the Pecuniary Claims Convention, as follows:—

In case of any claim being put forward by one party which is alleged by the other party to be barred by treaty, the Commission shall first deal with and decide question whether the claim is so barred, and, in the event of decision that the claim is so barred, claim shall be disallowed. Commission shall take into account, to such an extent as they shall consider just, any admission of liability by the Government against whom claim is put forward or any failure on the part of claimant to obtain satisfaction through the legal remedies which were open to him, or which were placed at his disposal. Commission may include in its award, in respect of any claim, interest at rate not exceeding 4 per cent. for the period or any part thereof between the date when the claim was first brought to notice of the other party and the confirmation of the schedule in which it is included.

The Minister states that he sees no objection to this amended draft, and recommends that the Government of Canada concur therein.

The Committee, on the recommendation of the Secretary of State for External Affairs, advise that Your Excellency may be pleased to inform the Right Honourable the Principal Secretary of State for the Colonies and His Majesty's Ambassador at Washington, by telegraph, in the sense of this minute.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,  
 Clerk of the Privy Council.

13510

No. 133.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 26 April, 1911.)

[Answered by No. 137.]

SIR,

Foreign Office, 25 April, 1911.

I AM directed by Secretary Sir E. Grey to acknowledge receipt of your letter 12695 of the 21st instant,† enclosing copy of a telegram from the Governor of Newfoundland respecting the pecuniary claims negotiations with the United States Government.

\* No. 126.

† L.F. transmitting copy of No. 129.

In Sir E. Grey's opinion there is nothing in the schedules nor in the terms of submission, as amended by His Majesty's Government, which can be regarded as constituting an admission of liability by the Newfoundland Government or by any of the other Governments concerned in the proposed arbitration, nor does the Colonial Government appear to be precluded from raising every possible objection before the Commission.

Sir E. Grey is aware that the provision in the terms of submission for the payment of interest may not be to the advantage of the Newfoundland Government, who so far as he knows have no claims against the United States. Nevertheless he considers that it is only fair that interest should follow the award and, as a matter of fact, interest would probably be awarded by the Commission even without the existence of the terms of submission. This course has been commonly followed by Claims Commissions in the past, although the rate at which the interest has been calculated and the date from which it has been reckoned have varied considerably.

In the present instance the rate of interest appears reasonable, while the claims of the United States against Newfoundland, which were only brought to the notice of His Majesty's Government in Mr. Secretary Root's note of March 10th, 1908,\* cannot be of very long standing.

Sir E. Grey would therefore be obliged if the Secretary of State for the Colonies would lay these views before the Newfoundland Government by telegraph and urge them strongly to withdraw their objections; and to inform both His Majesty's Government and Mr. Bryce direct of the results of their reconsideration.

It is important that their decision should be taken as soon as possible because the United States Government may at any moment propose to lay the claims agreement before the Senate.

I am, &c.,  
 LOUIS MALLET.

10678

No. 134.

SIERRA LEONE.

THE SECRETARY OF STATE TO THE ACTING GOVERNOR.

[Answered by No. 169.]

(Confidential.)

SIR,

Downing Street, 25th April, 1911.

WITH reference to my predecessor's confidential circular of the 27th of October last† transmitting a copy of an agreement between His Majesty's Government and the United States relative to the arbitration of pecuniary claims, I have the honour to inform you that the Government of the United States have now presented two claims for compensation arising out of the Sierra Leone insurrection of 1898, which are as follows:—

|   |               |
|---|---------------|
| Home Frontier and Foreign Missionary Society of the |               |
| United Brethren in Christ ... ..                    | \$87,168.15c. |

(In this connection I enclose a copy of a letter† from the Foreign Office, with enclosures giving details of the claim), and

|                       |           |
|-----------------------|-----------|
| Daniel Johnson ... .. | \$100,000 |
|-----------------------|-----------|

—a claim for loss of wife, children, and property, alleged to be due to insufficient police protection during a disturbance in Sierra Leone in May, 1898.

I shall be glad if you will furnish me, for the use of the Secretary of State for Foreign Affairs, who is now collecting material for the various British cases, with

\* See Dominions No. 20, p. 61.

† 31185/10: not printed.

‡ 5503-99: not printed.



the fullest information available in respect of these claims. I shall be glad if you will also forward, in original, any documentary evidence that may be available.

I shall be obliged if you will treat this matter as urgent.

I have, &c.,  
L. HARCOURT.

10678

No. 135.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 142.]

(Confidential.)

SIR, Downing Street, 25 April, 1911.  
WITH reference to your letter of the 1st inst.,\* I am directed by Mr. Secretary Harcourt to transmit, for the information of Sir E. Grey, a copy of a despatch† which has been addressed to the Officer Administering the Government of Sierra Leone respecting the claims for compensation arising out of the Sierra Leone insurrection of 1898, which have been put forward by the Government of the United States on behalf of Daniel Johnson and the United Brethren Mission. The particulars furnished by the Government of the United States are very meagre, and I am to suggest that some further information with regard to the claims should be obtained from the United States.

I am also to enclose, for Sir E. Grey's information, a copy of the Blue Book‡ containing the Report of Her Majesty's Commissioner, Governor Sir F. Cardew's observations, and a despatch from the Secretary of State for the Colonies on the subject of the Sierra Leone insurrection, together with a copy of the evidence and documents§ upon which the report of Her Majesty's Commissioner was founded. I am to point out that the claim of the United Brethren in Christ was considered in 1899, and that, as notified in the letter from this department of the 26th September, 1899,|| Her Majesty's Government was advised that neither the Home nor the Colonial Government were liable for the losses incurred by this society. The claim of Daniel Johnson, if it had been preferred at the time, would doubtless have been rejected on the same grounds. It has now been decided by His Majesty's Government to allow these claims to go to arbitration for reasons of Imperial policy and quite apart from their merits; and in the circumstances Mr. Harcourt considers that any expenditure arising out of the reference to arbitration—i.e., the expenses of conducting the case, the amount of the award (if given against His Majesty's Government), and the claims of British subjects for losses sustained under similar circumstances—should be borne by the Imperial Exchequer, and he would be glad if Sir E. Grey would address a communication to the Lords Commissioners of the Treasury in that sense.

I am, &c.,  
G. V. FIDDES.

13688

No. 136.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 27 April, 1911.)

The Under Secretary of State for Foreign Affairs presents his compliments to the Under Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following papers:—Mr. Bryce, No. 115, April 18, 1911: Telegram to Mr. Bryce, No. 117, April 27, 1911: Claims Convention; terms of submission; interest clause.

Reference to previous letter: Foreign Office, April 25, 1911.¶

Foreign Office,  
April 27, 1911.

\* No. 116. † No. 134. ‡ [C. 9388]. § [C. 9391]. ¶ 21775/99: not printed. ¶ No. 132.

Enclosure 1 in No. 136.

(No. 115.)

SIR, British Embassy, Washington, April 18, 1911.  
SINCE writing my despatch, No. 111, of April 14th, I have received from the Government of Newfoundland a telegram stating that, while they agree to the inclusion of the additional claims contained in my despatch to them of March 28 and to the terms of submission contained in the telegram they received from the Colonial Office on April 3, they entertain objections to the paragraph in those terms relating to the power of the Tribunal to award interest. This is a matter of no great intrinsic importance, inasmuch as it is probable that the Tribunal would conceive the awarding of interest to lie within their powers in any case, but I will endeavour to ascertain what amount of importance the United States Government attach to the Article: and the matter is one which might usefully be discussed in London with Sir Edward Morris when he arrives there shortly, if it has not been previously disposed of.

I have, &c.,  
JAMES BRYCE.

The Right Honourable  
Sir Edward Grey, Bart., M.P.,  
&c. &c. &c.

Enclosure 2 in No. 136.

TELEGRAM to MR. BRYCE, Washington Foreign Office, 27 April, 1911.

(No. 117. R.)

Your despatch, No. 115 (of April 18) (Claims Convention).

We are in communication with the Colonial Office, and urging reconsideration by Newfoundland of her objections to clause in terms of submission relating to interest.

13510

No. 137.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 144.]

SIR, Downing Street, 29 April, 1911.  
I AM directed by Mr. Secretary Harcourt to acknowledge the receipt of your letters of the 24th and 25th of April\* on the subject of the pecuniary claims negotiations with the United States Government.

2. In reply, I am to transmit to you copies of despatches† from the Governor-General of the Dominion of Canada and the Governor-General of the Union of South Africa stating the views of their Governments with respect to certain points connected with the negotiations.

3. Before telegraphing to the Governor of Newfoundland with a view to ask that Government to concur in the inclusion in the terms of submission of a provision regarding interest, I am to enquire whether, in Sir Edward Grey's opinion, it will be safe to give an assurance to the Newfoundland Government that interest on the claims of the United States against that Government will only run from the date of Mr. Secretary Root's note of the 10th of March, 1908. It is provided in No. 3 of the terms of submission that interest should run from the date when the claim was first brought to the notice of the other party, and there is no information available in this Department as to when the claims mentioned in Mr. Root's note were first brought to the notice of the Government of Newfoundland or of His Majesty's Government. It will be seen from the enclosures in your letter of the 31st of December, 1908,‡ that many of the claims arose at early dates, in one case at least

\* Nos. 131 and 133.

† Nos. 132 and 130.

‡ No. 145 in Dominions No. 20.



going back to 1886, and to admit interest on these claims would probably amount relatively to a considerable sum if the date on which representations were made to the Newfoundland Government in each case were to be taken as the date of first bringing to the notice of the other party as contemplated in the terms of submission.

I am in this connexion also to enquire whether, in Sir E. Grey's opinion, the Tribunal would not, in the absence of a reference to interest in the terms of submission, have power under the Convention constituting it to award interest, at least in those cases in which interest was claimed (see especially Art. 8).

I am, &c.,  
H. W. JUST.

13962

No. 137A.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received May 1, 1911.)

Sir,

Foreign Office, April 29th, 1911.

On receipt of your letter 11335/11 of the 12th instant,\* a letter, copy of which is enclosed herewith, was addressed to the Lords Commissioners of His Majesty's Treasury requesting their sanction to the assumption by His Majesty's Government of the liability for an adverse award in the Studer claim.

I am, however, directed by the Secretary of State for Foreign Affairs to point out, that when Mr. Harcourt, by your letter of February 21st last,† withdrew his objections to the submission of that claim to arbitration, it was proposed by this Department that the question of liability should be deferred till after the issue of the award. Simultaneously, telegraphic instructions to Mr. Bryce to include the claim in the schedules were concurred in by your Department semi-officially, and a copy of them was sent to you officially on February 22nd.‡

There appears to be no reason why the Sultan should hear of the transaction pending the confirmation of the agreement and schedules, but Sir E. Grey was under the impression that His Highness's wishes had been consulted in the matter since the date of the presentation of the claim by the United States Government in March, 1908.

I am, &c.,  
LOUIS MALLET.

Enclosure in No. 137A.

Sm,

Foreign Office, April 26th, 1911.

With reference to your letter of February 22nd last, I am directed by Secretary Sir E. Grey to state that, among the claims which the United States Government wish to refer to arbitration under the proposed Pecuniary Claims Agreement, is that of the late Major Studer against the Government of Johore.

The origin of this claim is shown in the summary of the earlier correspondence, copy of which is enclosed herewith in print. The amount of the claim is stated by the United States Government to be \$500,000 (silver).

The United States Government have throughout the negotiations attached considerable importance to its inclusion in the schedules, and Sir E. Grey has accordingly pressed the Secretary of State for the Colonies to agree to its submission to arbitration. To that course Mr. Harcourt agreed by Colonial Office letter of February 21st (copy enclosed). Mr. Bryce was thereupon instructed to admit it to the schedules (see copy of telegram of February 22nd enclosed), and Sir E. Grey proposed that consideration of the question of liability should be deferred until the award had been given (Foreign Office to Colonial Office, February 23rd enclosed).

I am now to transmit to you a copy of a letter from the Colonial Office, from which it appears that an immediate settlement of that question is desirable.

In view of the important considerations advanced by the Colonial Office, Sir E.

\* No. 128A.

† No. 82.

‡ 6042: not printed.

Grey trusts that the Lords Commissioners of the Treasury will agree to liability, if any, being assumed by His Majesty's Government.

Sir E. Grey would be glad to receive their Lordships' views on the subject at your early convenience, as Congress is now sitting and the United States Government may at any moment present the agreement and schedules to the Senate for confirmation.

The Secretary  
to the Treasury.

I am, &c.,  
LOUIS MALLET.

## SCHEDULE OF ENCLOSURES.

Memorandum 8588, pp. 34, 35, 36.  
Colonial Office, February 21.  
To Washington, telegram 42, February 22.  
To Colonial Office, February 23.  
Colonial Office, April 12.

13963

No. 138.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 1 May, 1911.)

[Answered by L.F. transmitting copy of No. 139.]

Sir,

Foreign Office, 29 April, 1911.

With reference to my letter of the 15th ultimo\* respecting the pecuniary claims negotiations, I am directed by Secretary Sir E. Grey to enquire whether any answer has been received from the Canadian Government with regard to the proposed inclusion in the first schedule of certain additional United States claims, including the Atlin claim.

If not, Sir E. Grey would be obliged if the Secretary of State for the Colonies would press the Canadian Government to telegraph their answer as soon as possible.

I am, &c.,  
LOUIS MALLET.

13963

No. 139.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Sent 11.50 a.m., 2nd May, 1911.)

TELEGRAM.

[Copy to Foreign Office, 3 May, 1911. L.F.]

[See No. 171.]

Pecuniary Claims Convention. My telegram 17th March.† Should be glad to receive as soon as possible reply as to inclusion of extra claims.—HARCOURT.

14560

No. 140.

FOREIGN OFFICE to COLONIAL OFFICE

(Received 5 May, 1911.)

[Answered by No. 150.]

Sir,

Foreign Office, May 4th, 1911.

With reference to the letter from this Department of the 4th ultimo,‡ I am directed by Secretary Sir E. Grey to transmit to you herewith copy of a despatch

\* No. 103.

† No. 104.

‡ No. 125.



from His Majesty's Ambassador at Washington respecting the "terms of submission" to be attached to the pecuniary claims agreement. The memorandum purporting to be enclosed in the despatch has not been received at the Foreign Office,\* but it does not appear to be necessary to await it before proceeding to the consideration of the main point, namely, the amendments proposed by the United States Government in the British draft terms.

Sir E. Grey sees no objection to the substitution of the word "tribunal" for "commission" throughout, nor to the amendments in the wording of the Article relating to interest, which appear to him to leave the meaning of that Article unaltered.

He considers, however, that His Majesty's Government cannot properly accept the new Articles 2 and 3 as drafted by the United States Government.

In the first place the same principle which applies to Article 2 should also apply to Article 3, that is to say, an admission of liability should not, any more than a failure to exhaust legal remedies, be binding on the tribunal, but should be taken into account to the extent which the arbitrators may consider just.

Secondly, the language employed in Article 3 is open to misconstruction. It might be interpreted to mean that the tribunal were not to be entitled, after hearing all the facts and evidence in connexion with a claim, to reject it upon the ground of non-exhaustion of legal liability, where they thought it just so to reject it.

Sir E. Grey gathers, however, that this is not the wish of the United States Government.

After consideration of the despatch, he understands the intention of the United States Government to be that failure to have exhausted legal remedies should only be taken into account by the tribunal as one of the equities of a claim and that the exhaustion of legal remedies should not be treated by the tribunal as a condition precedent to the validity of a claim, failure to comply with which would alone justify or even necessitate its rejection.

Sir E. Grey thinks that His Majesty's Government may meet the wishes of the United States Government to this extent, and he proposes that the following Article should be substituted for Article 2 of the counter-draft enclosed in my letter referred to above and for Articles 2 and 3 of the United States draft now enclosed:—

"An admission of liability by the Government against whom a claim is put forward or a failure on the part of the claimant to endeavour to obtain satisfaction through the legal remedies which were open to him or which were placed at his disposal shall not be brought before the tribunal by the party alleging the same as a preliminary and separate issue, but shall be taken into account by the tribunal to such extent as it shall consider just when dealing with the claim upon its merits."

Subject to the concurrence of the Secretary of State for the Colonies, Sir E. Grey proposes to telegraph to Mr. Bryce in the above sense, instructing His Excellency to endeavour to obtain the acceptance of the amended version now proposed.

If Mr. Harcourt concurs, it would be desirable that the version acceptable to His Majesty's Government should be telegraphed to the Colonies with such explanations as may enable them to express their assent (or otherwise) without delay and with instructions to communicate their decision simultaneously to Mr. Bryce and to His Majesty's Government.

A separate letter will be addressed to you in answer to your letter of the 29th ultimo† with regard to the proposed communication to Newfoundland respecting the award of interest.

I am, &c.,

LOUIS MALLET.

Enclosure in No. 140.

(No. 111.)

Sir,

British Embassy, Washington, April 14th, 1911.

SINCE receipt of your telegram, No. 96, of the 1st instant, containing the amended terms of submission, as to which an agreement is required by the United States Government before submitting to the Senate the special agreement and schedules in the Pecuniary Claims Arbitration, informal negotiations have been almost daily pursued with the State Department in order to reach such agreement. It seemed very desirable that this should be effected, if possible, before approaching

\* Subsequently received and printed herein.

† No. 137.

the difficult negotiation as to the additional claims to be included by either party in the first schedule. Not being yet in receipt of the views of the Canadian and Newfoundland Governments on the subject of these claims, it would have been impossible in any case to press this part of the negotiation.

The United States negotiators were persuaded without much difficulty to accept the terms as amended by us with one exception, which seemed likely at first to cause considerable delay. The point was that involved in their Term IV. and in the second part of our Term II. as to the importance to be allowed in the proceedings to the principle that claimants must have exhausted their legal remedies.

The memorandum herewith enclosed, prepared for them at their request, summarizes the net results of the earlier discussions. After considering this they made several unacceptable suggestions, and on their part rejected our proposal that our draft be accepted with the addition of the words "and no further," thus:—

"The Tribunal shall take into account to such extent as they shall consider just and no further any failure, &c."

Part of the difficulty was probably largely due to our draft being drawn from the contrary standpoint to theirs, although it was not essentially and entirely contradictory thereto. It required much discussion, going pretty deep into the powers and position of arbitral tribunals, before the common ground of agreement could be made clear. It then became evident that all that would be really needed in order to effect the object desired by the United States Government, *i.e.*, to prevent a claim being stopped *in limine* on the ground that the remedies in National Courts have not been exhausted, would be attained by a provision that a plea to the jurisdiction of the Tribunal on that ground should not be peremptory, *i.e.*, should not be deemed conclusive to exclude the claim, the claim being allowed to go forward and be heard upon all the grounds which can be raised for or against it. They were eventually got to accept this definition of their position, and to accept our draft terms subject to an addition proposed by themselves which is in substance the same as that already suggested as a possible solution in the last paragraph of the enclosure to my despatch, No. 77, of the 17th ultimo. An attempt on our part to insert the word "solely," thus: "shall be rejected *solely* by application," was opposed, and we did not insist as the effect is the same in view of what precedes.

The other alterations in our draft terms, as marked in *red ink*,\* are unimportant and explain themselves. The draft terms as amended and accepted by them are herewith enclosed.

I venture to hope that the draft terms as now agreed on *ad referendum* may commend themselves to you as proper to be accepted without further amendment, for there is a prospect that the negotiations which must follow regarding the admission or exclusion of additional claims will be of a highly contentious nature, which might be embarrassed if complicated by further disputes as to these terms.

Copies of this despatch and its enclosures have been sent direct to Canada and Newfoundland, with the enclosed despatch.

I have, &c.,

JAMES BRYCE.

Sir Edward Grey, Bart., M.P.,

&c., &c., &c.

#### TERMS OF SUBMISSION.

I. In case of any claim being put forward by one party, which is alleged by the other party to be barred by treaty, *the Tribunal* shall first deal with and decide the question whether the claim is so barred, and in the event of a decision that the claim is so barred, the claim shall be disallowed.

II. *The Tribunal* shall take into account to such extent as it shall consider just any admission of liability by the Government against whom a claim is put forward.

III. The Tribunal shall take into account to such extent as it shall consider just any failure on the part of the claimant to obtain satisfaction through legal remedies which were open to him or placed at his disposal, *but no claim shall be*

\* Shown in *italic*.



*disallowed or rejected by application of the general principle of international law that the legal remedies have not been exhausted.*

IV. *The Tribunal, if it considers equitable, may include in its award in respect of any claim interest at a rate not exceeding four per cent. per annum for the whole or any part of the period between the date when the claim was first brought to the notice of the other party and that of the confirmation of the schedule in which it is included.*

#### MEMORANDUM.

##### *Terms of Submission.*

Question as to exhaustion of legal remedy.  
The American draft has as Section 4:—

"The inclusion of a claim in any of the following schedules shall operate as a bar to a plea in defence thereto that the legal remedies provided by municipal law have not been exhausted or that the claim is now pending before a municipal tribunal of competent jurisdiction."

The British draft has as Section II.:—

"The Tribunal shall take into account to such extent as it shall consider just . . . any failure on the part of the claimant to obtain satisfaction through legal remedies which were open to him or placed at his disposal."

In behalf of the American draft it has been urged that, by admitting claims specifically to the schedules, the parties have in effect agreed to waive this principle of international law in order to have the cases heard on their merits.

That if the principle were rigidly applied there would, in effect, be very little arbitration, as nearly all claims would be disallowed, and that this being so, it is in the first place politic to have some such clause in order to remove misapprehensions that might injure the prospects of passage of the agreement in the Senate, and in the second place, such a clause is proper in order to prevent the Tribunal from disallowing claims solely on this ground.

As against this, and in support of the British draft, it is argued—

That a failure to prosecute legal remedies is an essential feature to the equities of any claim, as well as to the status as an international claim; and that to preclude the Tribunal from considering such a feature would be to restrain them from considering the case in its entirety.

That restrictions on the jurisdiction of an arbitral tribunal are undesirable in principle as being the cause of most disputes as to the acceptability of awards.

That a clause contradicting a recognised principle of international law in so important a compact between two leading Powers would form a new departure in international jurisprudence. As the latter is the sole basis of international law, this departure, as prejudicing gravely that principle, might have far-reaching consequences and would require more careful consideration than it could receive in this connexion.

That the policy involved in the American draft of making specific inclusion of a claim in the schedule a reason for ruling out of court a defence questioning the status of the claim would be the contrary to that followed by the first clause of the terms. There it is specially provided that questions as to the status of a claim affected by treaty limitations may be raised so that the inclusion of the claim in the schedule may not be held to be derogatory of the treaty.

That there is no reason either from the precedents or from the probabilities to apprehend that the Tribunal will disallow claims solely on the ground of non-exhaustion of legal remedies; and that this possibility is provided against by the wording of the British draft, which implies by the words "to such extent as they shall consider just" that the point is to be considered equitably and not technically.

For these reasons it is argued that the British draft, by recognising the principle of international law, by leaving the Tribunal free to exercise its discretion, and by discouraging a disallowance of any claim on the sole ground of non-exhaustion of

legal remedies, meets the requirements of the situation in so far as they have been realised since the submission of the American draft.

G. Y.

British Embassy,  
Washington.

14561

No. 141.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 5 May, 1911.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copies of the following papers: Mr. Bryce, No. 105, April 11: To Mr. Bryce, No. 200, May 4. (Pecuniary Claims Convention with United States of America.)

Reference to previous letter: Foreign Office, April 25.\*

Foreign Office,

May 4, 1911.

Enclosure 1 in No. 141.

(No. 105.)

SIR,

British Embassy, Washington, April 11, 1911.

I HAVE the honour to transmit herewith copies of a note which I have addressed to the United States Government with reference to the terms of submission under the Pecuniary Claims Agreement and presenting for arbitration the Philippines Customs claims. A draft of a note was submitted in my despatch, No. 64, of March 4, and approved by you, and it is, with a few necessary amendments, that which has now gone to the United States Government.

I also enclose copies of a despatch addressed to Newfoundland on receipt from the United States Government of the additional Fishery Claims they wished to include in the First Schedule, and also dealing with the terms of submission. As it was suggested in my despatches, No. 77, of 17th March, and No. 64, of 4th March, that it would be proper to do, I have to-day telegraphed to the Newfoundland Government asking whether these additional claims are to be admitted and whether the terms of submission as amended by you are accepted. The Dominion Government has already accepted them in their amended form.

On receipt of the answer of the Newfoundland Government it will be possible to proceed with endeavours to reach such an agreement with the State Department as to the final form of the first schedule and as to the other questions now raised as may be acceptable to you and the Colonial Governments.

But there is no doubt that our positive refusal to submit to arbitration the South African war claims and the similar refusal of Canada in regard to the Atlin claim, together with the questions still matters of controversy as to the terms of submission and the proposal to reopen the classification of claims, place the negotiations in a position which may render it difficult to retain the results already reached and formally recorded in the exchange of notes of March 3-4. The situation will evidently require careful handling here and possibly further concessions from His Majesty's Government and from Canada in the way of reserving certain of their claims for the later schedule, for the United States seem disposed to think that if we insist on omitting the South African and Atlin claims they will be entitled to such concessions, and, of course, all exceptions reduce the value of the Treaty.

I have, &c.,

JAMES BRYCE.

The Right Honourable

Sir Edward Grey, Bart., M.P.,

&c., &c., &c.

\* No 133.



(No. 53.)

SIR,

British Embassy, Washington, 3 April, 1911.

I duly forwarded to His Majesty's Government the notes exchanged between us under dates of March 3 and 4, recording the agreement reached as to the pecuniary claims to be included by either Government in the first schedule to be annexed to the Agreement of 18 August, 1910.

I am now instructed to express the satisfaction of His Majesty's Government at the substantial progress made towards a final settlement of this complicated and difficult matter, and to urge on you the desirability of taking advantage of the summoning of Congress in special session on April 4 to obtain the necessary action by the Senate on the special agreement itself and on the first schedule, as now agreed on, with such additions as may in the meantime have been assented to by the parties. In this connection I am to observe that His Majesty's Government note that no provision has yet been made for including the claims for refund of Customs duties in the Philippines, and I am directed to ask for the inclusion of these claims.

In regard to the terms of submission annexed to your note, His Majesty's Government have instructed me to discuss with you certain alterations which they consider should be made. The text of the terms of submission, as altered in the sense desired by His Majesty's Government, is enclosed herewith.

His Majesty's Government would be glad that these terms be discussed by us at the earliest possible moment.

I have, &amp;c.,

JAMES BRYCE.

The Honourable

Philander C. Knox,

Secretary of State.

SIR,

British Embassy, Washington, March 28, 1911.

In my despatch of February 15, I had the honour to report an agreement reached *ad referendum* with the United States Government as to the claims to be submitted to arbitration under the Special Agreement of 1910 and included in the first schedule thereto, and, after some telegraphic correspondence, I received in reply the assent of the Newfoundland Government to the schedule as proposed.

The assent of His Majesty's Government and of the Government of Canada, to the extent that it was concerned, having also been received by telegraph, the Special Agreement and schedule were brought up before the Senate Committee of Foreign Affairs in a special meeting on February 25. Owing, however, to the disorganised state of the Senate and to the great pressure of other business in the closing week of the session, it was found impracticable to proceed further before the 61st Congress. The probability of an early extra session of the 62nd Congress was already great and the chance of the passage in the expiring Congress was so slender as to make it prudent to avoid the risk of prejudicing presentation a few weeks hence.

In order, however, to put the matter in the best possible position for such presentation on the meeting of the 62nd Congress on April 4, negotiations were prosecuted as reported in the despatch\* to the Foreign Office copy of which is enclosed, and the informal agreement already arrived at was put on official record.

As will be seen by reference to the above-mentioned despatch, this was not accomplished without considerable difficulty. Eventually the notes copies of which are enclosed were exchanged, which put the matter on a firm footing and one which appears to make due and satisfactory provision for Newfoundland interests.

In so far as Newfoundland interests are concerned the negotiations seem to be advancing towards satisfactory results.

The intention of Your Excellency's Government to settle out of court such claims as it finds to be covered by, and therefore proper to pay under, the Award of the North Atlantic Coast Fisheries Arbitration when adequate proofs of liability have been supplied and the amount due ascertained receives proper recognition by the United States Government. The State Department officials have been engaged since the date of their note in collecting proofs as regards the "fishery" claims already submitted and such additional claims as may still be presented by the United States

\* Enclosure in No. 116.

Government under the Award. In order that the Newfoundland Government may be enabled to deal with the question at once as a whole in connection with the first schedule now under negotiation, and to prevent further claims from being faked up at leisure, pressure has been exercised on the United States Government to complete forthwith its list of "fishery" claims. The enclosed list of additional "fishery" claims has now been obtained from them with a statement that it completes their "fishery" claims against Newfoundland. Possibly a few small claims may shortly be added, but, if so, they will be few in number and will be reported to you by telegraph. Any further claims that may possibly be subsequently discovered can be put off until another schedule, probably until after the meeting for business of the Arbitration Commission. But these will be merely oversights and, we are assured, unimportant in number and insignificant in amount. As it is very desirable to submit the Agreement and the First Schedule to the Senate on April 4, when the special session begins, I should be glad to receive by telegraph the assent of your Ministers to the inclusion of these additional fishery claims.

Active efforts are also being made to submit at as early a date as possible such proofs of liability in the claims herewith listed in the shape of affidavits, receipts, &c., as may enable the Newfoundland Government to deal with such as it may think proper without going to arbitration. This evidence will be submitted long before the meeting of the Commission; but it will, of course, not be necessary to delay submission to the Senate and organisation of the Commission for it.

There remains only the question of the "terms of submission" as to which His Majesty's Government has been in communication with your Ministers. In this connection it will not have escaped your attention that the last paragraph of the United States note purports to treat an agreement on the terms of submission as a necessary preliminary to submission to the Senate. Draft terms of submission are annexed to the note, which invites suggestions as to any changes required.

As these terms of submission have been found open to certain objections and the advantage of having terms of submission at all had been questioned before it was known how much importance was attached by the United States Government to this formality, I have had the enclosed memorandum\* prepared, examining the draft terms annexed to the United States note in relation to our interests. The conclusion suggested by this examination is that, subject to the alterations suggested and such others of a similar character as may be put forward hereafter by the Governments concerned, it is not only to the advantage of the arbitration as a whole, but also clearly in our interests as litigants thereunder, to agree upon some such terms of submission.

Should Your Excellency's Ministers, after examining the matter in the light of the additional information herewith supplied both as to the general status of these terms and as to their special effect on our interests, arrive at the conclusion that they be admitted in some such modified form as suggested in the memorandum, I should be glad if their views on the subject, together with any suggestions as to alterations, might be communicated simultaneously to His Majesty's Government and myself at the earliest possible moment, inasmuch as time has now become important.

An early settlement of the terms of submission, which, I think, might be arrived at on the basis of the modifications suggested in the memorandum sent herewith, has also been urged on His Majesty's Government and the Government of Canada in similar terms to the above.

Your Excellency's Government have throughout these recent negotiations shown so much appreciation of the difficulties involved and the danger of delays which have so often already proved fatal to a settlement that I feel I need not dwell on the importance of an early decision as to the admission of the additional claims and the settlement of the terms of submission as modified in a manner satisfactory to all parties.

I have, &amp;c.,

JAMES BRYCE.

His Excellency

Sir Ralph C. Williams, K.C.M.G.,

Governor of Newfoundland.

\* See Enclosure in No. 122.



## FISHERY CLAIMS AGAINST NEWFOUNDLAND.

## A.—First List summarised in Schedule annexed to despatch of February 15.

| Name of Claim.                   | Origin and Nature of Claim.   | Amount.                                |
|----------------------------------|---|--|
| Gardner & Parsons ...            | Illegal imposition of light dues and other duties in Newfoundland. 5 vessels.<br>List of vessels:<br>"Corsair," "Argo,"<br>"Robin Hood," "Independence,"<br>"Dreadnought,"  | 1,145.98                               |
| Gorton-Pow Fisheries Co. ...     | Illegal imposition of light dues and other duties in Newfoundland. 5 vessels.<br>List of vessels:<br>"J. J. Flaherty," "Scepter,"<br>"Gossip," "Essex,"<br>"Athlete,"   | 116.64                                 |
| W. H. Jordan & Orlando Merchant. | Illegal imposition of light dues and other duties in Newfoundland. 15 vessels.<br>List of vessels:<br>"Lewis H. Giles," "Harvard,"<br>"O. W. Holmes," "Richard Weinwright,"<br>"The Gatherer," "Mary E. Harty,"<br>"Hattie E. Worcester," "Henry M. Stanley,"<br>"Goldenrod," "Lottie G. Merchant,"<br>"Joseph Rowe," "Harriet W. Babson,"<br>"Grayling," "Avalon,"<br>"Constellation," | 3,547.00                               |
| Jerome McDonald ...              | Illegal imposition of light dues and other duties in Newfoundland. 4 vessels.<br>List of vessels:<br>"Monitor," "Senator,"<br>"Gladiator," "Preceptor,"   | 1,644.60                               |
| Jesse L. Morton ...              | Refusal to allow repairs to vessel at St. John's. 1 vessel.<br>"Horace B. Parker."  | 1,600.00                               |
| "Harry A. Nickerson"             | Trawling within three-mile limit ...  | Not specified.                         |
| Hugh Parkhurst & Co. ...         | Illegal imposition of light dues and other duties in Newfoundland. 5 vessels.<br>List of vessels:<br>"Senator Saulsbury," "Rival,"<br>"Arthur D. Story," "Diana,"<br>"George Parker,"   | 1,954.50                               |
| John Pew & Sons ...              | Illegal imposition of light dues and other duties in Newfoundland. 5 vessels.<br>List of vessels:<br>"A. E. Whyland," "Columbia,"<br>"Essex," "Orinoco,"<br>"Scepter,"  | 947.47                                 |
| A. D. Malloch ...                | Seizure by Newfoundland authorities of the equipment of the "Edna Wallace Hopper."  | Not specified.                         |
| D. B. Smith & Co. ...            | Illegal imposition of light dues and other duties in Newfoundland. 12 vessels as follows:—<br>"Smuggler," "Fernwood,"<br>"Lucinda L. Lowell," "Senator Gardner,"<br>"Helen F. Whittier," "Maxine Elliott,"<br>"Dora A. Lawson," "J. J. Flaherty,"<br>"Carrie W. Babson," "Tattler,"<br>"Golden Hope," "Stranger."   | 3,246.27                               |
| "Elector" (D. B. Smith & Co.)    | Loss of catch of vessel "Elector" ...   | 2,372.00<br>(including \$47 fees).     |
| Sylvanus Smith & Co. ...         | Illegal imposition of light dues and other duties in Newfoundland. 6 vessels.<br>List of vessels:<br>"Lucille," "Arcadia,"<br>"Bohemia," "Parthia,"<br>"Claudia," "Arabia."   | 716.75                                 |
| Carl C. Young (2 claims) ...     | (First) Customs duties, 3 vessels as follows: "Dauntless," "A. E. Whyland," and "Wm. E. Morrissey." (Second) loss of catch, vessel "A. E. Whyland."   | \$937 1st claim.<br>\$2,372 2nd claim. |

| Name of Claim.        | Origin and Nature of Claim.  | Amount.     |
|-----------------------|--|-------------|
| Thos. H. White ...    | Schooner "Rapid Transit." Alleged unlawful penalty inflicted at Fortune Bay, Newfoundland, for violation of local statute; claimant fined and cargo of herring destroyed on or about April 14, 1890.   | \$ 7,383.33 |
| Robert A. Tarr ...    | Seizure, condemnation, and sale of his vessel "Lizzie A. Tarr" in 1870 for fishing within three miles (Canada) of shore in the Gulf of St. Lawrence.   | 17,601.10   |
| Cunningham & Thompson | Illegal imposition of light dues and other duties in Newfoundland. 13 vessels.<br>List of vessels:<br>"Masconome," "Aloha,"<br>"Talisman," "Nourmahal,"<br>"Arbutus," "Ingomar,"<br>"Norma," "Puritan,"<br>"Anglo-Saxon," "Jennie B. Hodgdon,"<br>"Norumbega," "Arkona,"<br>"Quickstep," | 2,779.52    |
| "Arethusa" ...        | Fine paid in 1908 for fishing with trawls inside the three-mile limit, Newfoundland.   | 220.05      |
| Davis Brothers ...    | Illegal imposition of light dues and other duties in Newfoundland. 9 vessels.<br>List of vessels:<br>"Oregon," "Georgie Campbell,"<br>"Margaret," "Blanche,"<br>"Theo. Roosevelt," "Veda McKown,"<br>"L. M. Stanwood," "E. A. Perkins,"<br>"Kearsarge,"                                  | 982.59      |

## B.—Supplementary Lists annexed to Despatch of 26th March.

## (I.) Additional claims of owners who have filed claims in previous lists.

| Name of Claim.   | Origin and Nature of Claim.  | Amount.                  |
|--|--|--------------------------|
| Cunningham & Thompson (additional claims).   | Illegal imposition of light dues and other duties in Newfoundland. 13 vessels.<br>"Aloha," "Jennie B. Hodgdon,"<br>"Talisman," "Norma,"<br>"Ingomar," "S. P. Willard,"<br>"Independence II," "Corona,"<br>"Nourmahal," "Arkona,"<br>"Arbutus," "Saladin,"<br>"Arethusa," | \$ 2,243.42<br>*1,054.85 |
| Sylvanus Smith & Co. (additional claims).  | Illegal imposition of light dues and other duties in Newfoundland. 5 vessels.<br>"Bohemia," "Arcadia,"<br>"Sylvania," "Claudia,"<br>"Parthia,"   | 468.71<br>*489.19        |
| Jerome McDonald (additional claims).   | Illegal imposition of light dues and other duties in Newfoundland. 3 vessels.<br>"Preceptor," "Gladiator,"<br>"Monitor,"   | *145.71<br>229.33        |
| John Chisholm (additional claims).   | Illegal imposition of light dues and other duties in Newfoundland. 5 vessels.<br>"Admiral Dewey," "Monarch,"<br>"Harry G. French," "Judique,"<br>"Conqueror,"  | 419.91<br>*229.23        |
| Carl C. Young (substitute for former list, except as to consequential damage claim for "A. E. Whyland"). | Illegal imposition of light dues and other duties in Newfoundland. 3 vessels.<br>"Dauntless," "A. E. Whyland,"<br>"William E. Morrissey,"  | 1,509.47<br>*73.35       |
| Hugh Parkhurst & Co. (substitute for former list).   | Illegal imposition of light dues and other duties in Newfoundland. 6 vessels.<br>"Rival," "George Parker,"<br>"Arthur D. Story," "Sen. Saulsbury,"<br>"Patrician," "Diana."  | 1,172.78                 |

\* The starred amounts represent liabilities claimed to have been incurred subsequent to the date of the special agreement of 10 August, 1910. They are in addition to the other amounts.



| Name of Claim.                                | Origin and Nature of Claim.   | Amount.               |
|---|---|-----------------------|
| A. D. Mallock (additional claims).            | Illegal imposition of light dues and other duties in Newfoundland. 3 vessels.<br>"Indiana," "Alert,"<br>"Edna Wallace Hopper."  | \$ 429.61<br>*92.03   |
| Davis Brothers (additional claims).           | Illegal imposition of light dues and other duties in Newfoundland. 6 vessels.<br>"Theodore Roosevelt," "Blanche,"<br>"Georgie Campbell," "Lena & Maud,"<br>"Oregon," "Veda McKown."   | 1,404.35<br>*458.66   |
| Orlando Merchant (additional claims).         | Illegal imposition of light dues and other duties in Newfoundland. 10 vessels.<br>"Lottie G. Merchant," "Goldenrod,"<br>"Avalon," "Clintonia,"<br>"Richard Wainwright," "Esperanto,"<br>"Oriole," "Giles,"<br>"Harvard," "Henry M. Stanley."  | 1,654.88<br>*265.32   |
| Gorton-Pew Fisheries Co. (additional claims). | Illegal imposition of light dues and other duties in Newfoundland. 36 vessels.<br>"A. M. Parker," "Miranda,"<br>"Priscilla Smith," "Madonna,"<br>"Senator Gardner," "Atlanta,"<br>"Corsair," "Gov. Russell,"<br>"Vigilant," "Mystery,"<br>"Nickerson, Harry A." "Jas. A. Garfield,"<br>"Gossip," "L. I. Lowell,"<br>"Flirt," "Don A. Lawson,"<br>"Ella G. King," "Tattler,"<br>"Helen G. Wells," "Alice R. Lawson,"<br>"Ramona," "Olga,"<br>"Massachusetts," "J. B. Bradley,"<br>"Ellen C. Burke," "Fannie Smith,"<br>"J. J. Flaherty," "Rob Roy,"<br>"George R. Alston," "Smuggler,"<br>"Maxine Elliott," "Essex,"<br>"Vera," "Athlete,"<br>"Orinoco," "Valkyrie." | 3,173.52<br>*2,509.22 |

\* The starred amounts represent liabilities claimed to have been incurred subsequent to the date of the special agreement of 10 August, 1910. They are in addition to the other amounts.

## (II.) Claims of owners who have not heretofore filed claims.

| Name of Claim.   | Origin and Nature of Claim.   | Amount.                |
|--|---|------------------------|
| Thomas M. Nickolson ...  | Illegal imposition of light dues and other duties in Newfoundland. 13 vessels.<br>"Ada S. Babson," "Landseer,"<br>"Elizabeth N." "Edgar S. Foster,"<br>"Hiram Lowell," "A. M. Nickolson,"<br>"M. B. Stetson," "William Matheson,"<br>"A. V. S. Woodruff," "Robin Hood,"<br>"T. M. Nickolson," "Annie G. Quinzer,"<br>"N. E. Symonds." | \$ 3,011.51<br>*804.10 |
| M. J. Paison (successor to Consolidated Cold Storage Company). | Illegal imposition of light dues and other duties in Newfoundland. 3 vessels.<br>Barge "Tillid," Schooner "J. K. Mantug "Clarita," ing."  | 444.96                 |
| M. J. Dillon ...   | Illegal imposition of light dues and other duties in Newfoundland.<br>Schooner "Edith Emery."   | 36.11                  |
| Russel D. Terry ...  | Illegal imposition of light dues and other duties in Newfoundland.<br>Schooner "Centennial."  | 146.42                 |
| Lemuel E. Spinney ...  | Illegal imposition of light dues and other duties in Newfoundland. 3 vessels.<br>"American," "Arbitrator,"<br>"Dictator,"   | 298.95<br>*22.08       |

\* Subsequent to August 18, 1910.

| Name of Claim.            | Origin and Nature of Claim.  | Amount.             |
|---------------------------|--|---------------------|
| William H. Thomas ...     | Illegal imposition of light dues and other duties in Newfoundland. 2 vessels.<br>"Elmer E. Gray," "Thomas L. Gorton."  | \$ 108.48<br>*22.08 |
| Frank H. Hall ...         | Illegal imposition of light dues and other duties in Newfoundland. 3 vessels.<br>"Ralph H. Hall," "Sarah N. Lee,"<br>"Famstina."   | 1,234.85<br>*110.03 |
| M. Walen & Sons, Inc. ... | Illegal imposition of light dues and other duties in Newfoundland. 6 vessels.<br>"Kentucky," "Hattie A. Heckman,"<br>"Eddie W. Prior," "Ella M. Goodwin,"<br>"Orpheus," "Bessie M. Devine,"<br>"Arthur James." | 687.89<br>*169.75   |
| Atlantic Maritime Company | Illegal imposition of light dues and other duties in Newfoundland. 7 vessels.<br>"James W. Parker," "Elste,"<br>"Raynab," "Fannie E. Prescott,"<br>"Susan and Mary," "E. E. Gray,"<br>"Mildred Robinson."      | 87.76<br>*159.26    |
| Waldo I. Wenson ...       | Illegal imposition of light dues and other duties in Newfoundland. 5 vessels.<br>"American," "Procyon,"<br>"Mystery," "Eddie W. Morrissey,"<br>"Marguerite."   | 739.23              |
| Edward Trevooy ...        | Illegal imposition of light dues and other duties in Newfoundland. 1 vessel.<br>Schooner, "Edward Trevooy."  | 361.16              |
| Henry Atwood ...          | Illegal imposition of light dues and other duties in Newfoundland. 1 vessel.<br>"Fannie B. Atwood."  | 21.00               |
| Fred Thompson ...         | Illegal imposition of light dues and other duties in Newfoundland. 1 vessel.<br>"Elsie M. Smith."  | 25.24               |

\* Subsequent to August 18, 1910.

Enclosure 2 in No. 141.

(No. 200.)

SIR,

Foreign Office, May 4, 1911.

I HAVE had under consideration Your Excellency's despatch, No. 105, of the 11th ultimo respecting the pecuniary claims negotiations.

As at present advised, I am unable fully to appreciate Your Excellency's reason for anticipating difficulty in retaining the results already achieved or why further concessions should, as hinted in the last paragraph of your despatch, be required of His Majesty's Government.

The only proposals of the United States Government which His Majesty's Government have so far definitely refused to accept have been those for the inclusion in the first schedule of the additional South African war claims (namely, Dietz, Reagan, Peter, Aronfreed, and Chamberlain) and the Atlin and Clark claims against Canada. You are aware of my reasons for the exclusion of the former category of claims and you have informed me that the United States Government will, in return, insist upon the exclusion of the Philippine War claims, which appear to me, according to the information at present in my possession, to be on the whole of greater intrinsic merit than the South African claims, besides being more numerous and for a larger sum. Their exclusion would, therefore, be a more than fair equivalent for the exclusion of the South African claims. I have, nevertheless, informed you that His Majesty's Government would be prepared to acquiesce in such an arrangement, and there is consequently no reason why there should be any question of further concessions to the United States Government on that account.

You are also aware that I have pressed the Canadian Government to reconsider their objections to the submission of the Atlin and Clark claims to arbitration, and I trust that they will be ready to meet the wishes of His Majesty's Government. Should this unfortunately not be the case, it will perhaps be necessary, if the United



States Government insist, to exclude some equivalent British or Canadian claim, the selection of which should not be a matter of difficulty.

On the other hand, His Majesty's Government have not objected to the addition of further claims to the list of fisheries claims against Newfoundland. The United States Government have, however, objected to the addition of further claims to the list of the Canadian hay claims. Nor have they withdrawn their refusal to admit the Philippine Customs claims.

Apart from the schedules the only difficulties which have been introduced into the negotiations are those connected with the "terms of submission" and the classification of the claims. Both of those devices, as originally proposed, affect the conditions under which the claims are to be referred to the tribunal. These conditions should, in my opinion, be regulated by the Agreement itself, and as the Agreement was officially proposed by the United States Government and accepted with unimportant amendments by His Majesty's Government, it would appear proper for the former Government to abide by its own proposals or at any rate to show some strong reason for their modification.

It is alleged that the classification of the claims will facilitate the passage of the Agreement through the Senate by concealing the disparity between the British and United States lists. Your Excellency is, of course, in a better position than I to judge of the effect of such an arrangement upon the Senate, but if the above is the only object of the classification it is clear that the present headings to the various categories may be modified so as to exclude any possibility of their restricting the discretion of the tribunal. It is, perhaps, immaterial that the classification itself is, owing to the inclusion of claims of different natures in the same categories, in some respects misleading. In spite of these objections I have, however, signified my willingness not to reopen the question of classification, if strong opposition is shown by the United States Government.

I am, &c.,

(For the Secretary of State.)

His Excellency  
The Right Honourable  
James Bryce, O.M.,  
&c., &c., &c.

14562

No. 142.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 5 May, 1911.)

[Answered by No. 175.]

SIR,

Foreign Office, May 4th, 1911.

I AM directed by Secretary Sir E. Grey to acknowledge receipt of your letter, 10678, of the 25th ultimo,\* respecting the claims of the United Brethren Mission and Daniel Johnson.

In Sir E. Grey's opinion the United States Government have now furnished all the information with regard to those claims which can in the circumstances be required by one Government from another, namely, the date of the claim, the occurrences out of which it arose, and the names of the claimants, and it rests with His Majesty's Government to collect all the information available for the purpose of rebutting them before the tribunal.

I am to add that as the expenses of the Pecuniary Claims Commission, so far as they fall upon the Imperial Exchequer, will be borne by the Foreign Office vote, any necessary communications with the Lords Commissioners of the Treasury will be undertaken by this Department, but the question of the incidence of an adverse award in the Sierra Leone claims is a matter which need not be dealt with until the award has been given, when it can be more satisfactorily decided in the light of all the information which will then be available.

I am, &c.,

LOUIS MALLET.

\* No. 135.

14681

No. 143.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 5 May, 1911.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—Treasury, May 2: (Claims Convention with the United States of America—"Studer" claim.)

Reference to previous letter: Colonial Office, April 12 (11335/11).\*

Foreign Office,

May 5, 1911.

Enclosure in No. 143.

SIR,

Treasury Chambers, May 2nd, 1911.

I HAVE laid before the Lords Commissioners of His Majesty's Treasury Mr. Mallet's letters of the 24th and 26th ultimo further respecting the settlement of outstanding pecuniary claims between Great Britain and the United States of America.

In reply, I am to request you to inform Secretary Sir E. Grey that as regards the "Studer" case my Lords are altogether at a loss to understand on what ground any liability can be imposed on the Imperial Government for the action of either the Sultan of Muar or the Sultan of Johore, over whose internal affairs they exercise no control.

But as the Secretary of State has agreed with the American Government that the case shall be referred to arbitration, my Lords have no alternative but to accept any liability which may result from this measure.

As regards the "Brown" case my Lords would be glad to see the minute of the South African Government referred to in Lord Gladstone's telegram of the 4th ultimo.

I am, &c.,

G. H. MURRAY.

The Under Secretary of State,  
Foreign Office.

14698

No. 144.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 6 May, 1911.)

[Answered by No. 150.]

SIR,

Foreign Office, May 5th, 1911.

With reference to paragraph 3 of your letter, 13510, of the 29th ultimo,† on the subject of the pecuniary claims negotiations, I am directed by Secretary Sir E. Grey to state that he does not think it would be safe to give an assurance to the Newfoundland Government as proposed, because it is impossible to foretell how the tribunal will interpret the terms of submission, even though His Majesty's Government may be fairly confident that their interpretation of Article 3, as far as the claims against Newfoundland are concerned, is correct.

Sir E. Grey had noticed that the earliest of those claims dated from 1886, but far the greater number date from 1900-1906.

He would, therefore, be obliged if the Newfoundland Government could be urged at an early date to withdraw their objections to Article 3 for the reasons previously proposed, but without giving any assurance as to the date from which interest would be reckoned.

Sir E. Grey has already expressed his views on the point raised in the last paragraph of your letter in my letter of the 25th ultimo.‡ Article 8 of the agree-

\* No. 128A.

† No. 137.

‡ No. 133.



ment to which you call attention only provides that interest shall not accrue after the date of the award.

I am, &c.,  
LOUIS MALLET.

14863

No. 145.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 8 May, 1911.)

The Under Secretary of State for Foreign Affairs presents his compliments to the Under Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—Mr. Bryce, Washington, No. 124A, April 24: (Claims Convention with U.S.A., Additional Claims *c.* Canada.)

Foreign Office,  
May 6, 1911.

Enclosure in No. 145.

(No. 124A.)

SIR, British Embassy, Washington, April 24, 1911.  
I HAVE the honour to transmit herewith copies of a despatch which I have addressed to the Governor-General of Canada regarding the admission of certain claims to the schedule attached to the Pecuniary Claims Convention. I also append a memorandum on the same subject which has been drawn up by Mr. Young, of this Embassy.

I have, &c.,  
JAMES BRYCE.

The Right Honourable  
Sir Edward Grey, Bart, M.P.,  
&c., &c., &c.

(No. 64.)

MY LORD, British Embassy, Washington, April 24, 1911.  
In my despatch, No. 38, of the 4th March, I had the honour to submit to the Dominion Government notes exchanged with the United States Government recording a provisional agreement as to the claims for admission to the schedule to be annexed to the Special Agreement for Arbitration of Pecuniary Claims on its submission to the Senate.

It was hoped that the agreement and schedule might have been submitted to the Senate on its convening in Special Session, but the United States Government determined that the interval between the termination of the 61st Congress and the meeting of the 62nd should be occupied with negotiation as to admission of the other claims which either party might wish to present, which has led to unfortunate delay. I have now been advised for some time as to the views of His Majesty's Government and of the Newfoundland and New Zealand Governments in regard to the additional claims to be admitted or presented, and only await the similar views of the Dominion Government to come to an understanding with the United States Government on the subject. Pending these instructions and anticipating possible objection on the part of the Dominion Government to admitting the additional American claims, steps have been taken informally to ascertain what extent of concession in the matter can be secured from the United States Government. I am of opinion that it might be possible to get the "fishery" claim, of the "Davy Crockett," withheld from this schedule—if the other fishery claims be admitted—and similarly the "Samuel Clark" claim might perhaps be held over if the "Atlin" claims were admitted. If the "Atlin" claims be refused, I anticipate a demand for the exclusion of the claim of the Cayuga Indians now in the Schedule, which presents points of similarity but is a much better claim. Similarly if the four additional fishery claims "Lizzie A. Tarr," "Davy Crockett," "Argonaut," and "Jonas French"

be refused, I anticipate serious trouble with the additional Canadian "bay" claims, which involve an almost certain liability of millions against the United States Government. If, on the other hand, all these fishery claims be admitted, I can obtain admission to the first schedule of the claims of the Canadian schooners "Thomas F. Bayard," "Jessie," and "Peschawa," referred to in your despatch, No. 80, of the 5th July, 1910.

It is moreover impossible to make any progress with the first schedule or even to approach the matter without imperilling the results already reached until the Dominion Government have assented to arbitrate some at least of the above-mentioned claims. Such assent is in the interests of the claimants on both sides, of Imperial international relations, and of the principles of arbitration. It should also be borne in mind that the United States have in no single case refused to arbitrate a Canadian claim and have refrained from presenting many of their claims against Canada.

I append a memorandum which has been prepared in this Embassy dealing with the arguments against arbitration of the Atlin claim in so far as they are known. Arguments in favour of its arbitration were advanced in my despatch, No. 38, of 4 March. These are the arguments which I anticipate the United States Government may advance if we refuse to arbitrate, and which consequently we must be prepared to meet.

I have, &c.,  
JAMES BRYCE.

His Excellency  
The Right Honourable  
The Earl Grey, G.C.M.G.,  
&c., &c., &c.,  
The Governor-General.

## ATLIN CLAIMS.

*Canadian argument (a).*—"If such a change in the domestic laws of Canada be *intra vires*, it cannot form the basis of a pecuniary claim." (P.C. Minute 15 January, 1909.)

*Answer:* Can this be maintained? It is true that the treaty rights of citizens of the United States when in British territory under Article I of the Treaty of 1815 are "subject always to the laws and statutes of the two countries"; but the right itself "to enjoy the most complete protection and security for their commerce," to "reciprocal liberty of commerce," and "freely and securely . . . to reside in any parts of the said territories" must not be essentially or especially retracted by such municipal laws or statutes, though it may be greatly, if generally, restricted. This characteristic of a treaty right subject to local legislation was clearly developed in the recent proceedings of the North Atlantic Coast Fisheries Arbitration. Such regulation in retraction of the right, while, constitutionally considered, it would be *intra vires*, would be none the less contrary to treaty. In so far as it is so contrary, it may form the basis of an international claim; although the establishment of liability will depend on the clearness of the contravention of the treaty. In the case in question there would seem to be sufficient basis for a claim in this respect, though there would be no grounds for apprehending that liability could be established.

*Canadian argument (b).*—(1) *A fortiori* it cannot form the basis of a claim if *ultra vires*, since then the statute is ineffective and cannot be enforced and the domestic courts would have afforded a perfect remedy. (P.C. Minute, 15 January, 1909.)

(2) If these be legal claims they might have been successfully asserted against the Government of British Columbia, but no such action has been taken. Such action would certainly be required from citizens of British Columbia before any such claim would receive further consideration. Why should foreigners be more favourably treated and be allowed recourse to international arbitration? Especially in view of the fact that the claimants could obtain no relief on legal grounds except through error of the tribunal in interpreting the law.

*Answer:* These two arguments, one advanced in 1909 and the other in the present juncture, would seem to be mutually contradictory, if the first means that the claimants had a perfect legal remedy against the policy of the Act and the second means that they could only raise a question of its proper interpretation. If, again,



the second means that the question of interpretation only could be raised before the arbitral tribunal, it involves an unprecedented restriction of the jurisdiction of such a tribunal.

Further, although the statute was adjudged ultimately to be *ultra vires*, it was enforced for a year, and, in so far as these aliens were concerned, achieved its full effect, as they would have incurred no further loss had it been maintained. What remedy to them would legal proceedings attacking its constitutionality have afforded? In such cases the citizen has his political remedy against the Government through party representation, the alien has his political remedy through diplomatic representation, and there is really no legal remedy.

In any case, the requirement that legal remedy be exhausted as a condition precedent to the presentation of an international claim is nowadays impossible to insist on. If strictly insisted on, it would so seriously restrict international intervention to the prejudice to the more civilised nations that it has been subjected to numerous counter-provisos and conditions. Two of the most important of these apply to this case: one being that the legal remedy need not be exhausted when (a) "there is undue discrimination against the party injured on account of his nationality" (Moore, VI. p. 699); or (b) where the legal remedy is insufficient.

It may be observed here that, were the principles strictly applied to this arbitration, it would rule out *in limine* most of the Canadian claims and act on the whole to our considerable disadvantage. But although this principle cannot now be accepted as depriving a claim of its international status, it still holds good as evidence in defence of liability. In other words, it should not be allowed to prevent this or any claim from going to arbitration, but it should certainly result in the Tribunal disallowing it.

*Canadian argument (c).*—That this legislation was passed by British Columbia as a counter stroke to similar legislation in Alaska; therefore there is no ground for a claim based on international comity or equity.

*Answer:* This argument is sufficiently answered by the fact that the Federal Government disallowed the Act, thereby depriving it of any claim to consideration as a national reprisal, and sufficiently suggesting that it was both inimical and inequitable. In any case the attitude involved in this argument would be difficult to maintain in face of the general professions now prevalent of readiness to arbitrate international disputes of a legal nature. It is indeed an interesting and instructive fact that this very legislative "reprisal" had its origin in a failure to arbitrate. The question of reciprocity in mining rights was the seventh on the programme of the Joint High Commission, which before it finally broke up had drafted a treaty applying specifically to mining rights that reciprocity which is generally provided, as above described in Article II. of the Treaty of 1815. It was in consequence of the failure of this arbitration that British Columbia passed the Act on which these claims are based. It looks as though these claims in turn may cause the failure of this arbitration of the last questions still outstanding between Great Britain and the United States.

In view of the previous connection of this question with arbitration and of the various means by which a refusal to arbitrate can be made difficult and even impossible by the party desirous of arbitrating, it would seem that to advance formally a refusal to arbitrate the Atlin claims must lead to undesirable difficulties and probable defeat in the end.

British Embassy,  
Washington,  
April 24, 1911.

14864

No. 146.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 8 May, 1911.)

SIR, Foreign Office, May 6, 1911.  
I AM directed by Secretary Sir E. Grey to acknowledge receipt of your letter, 10714, of the 8th ultimo,\* and I am to state that Sir E. Grey concurs in the answer

\* No. 127.

which the Secretary of State for the Colonies proposes to address to the Canadian Government with regard to the expenses of the pecuniary claims tribunal.

I am, &c.,  
LOUIS MALLET.

15176

No. 147.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 10 May, 1911.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper: Mr. Bryce, No. 120, April 19 (Washington): Pecuniary Claims Convention with the United States of America.

Reference to previous letter: Foreign Office, May 4.\*

Foreign Office,  
May 9, 1911.

Enclosure in No. 147.

(No. 120.)

SIR, British Embassy, Washington, April 19th, 1911.

In my despatch, No. 111, of the 14th instant, I submitted the terms of submission for the Pecuniary Claims Convention as amended to meet the views of the United States Government in informal discussion.

On asking, however, that this Agreement as amended might be put on formal record in a note from the United States Government for submission to His Majesty's Government, the enclosed letters were received from Mr. Lansing, the Agent of the United States Government in the matter, the second arriving after my despatch above mentioned had left. It is evident that, inferring from our request that the amended terms were not to be taken by us as an agreement but rather as a basis of further negotiation, the American negotiators considered they had been led to concede too much.

If Section III. of the Terms as now inverted and amended is objectionable, as may perhaps be thought, but the section as reported in my despatch No. 111 is deemed acceptable, I hope to be able to hold the American negotiators to the latter.

I have, &c.,  
JAMES BRYCE.

The Right Honourable  
Sir Edward Grey, Bart., M.P.,  
&c., &c., &c.

DEAR MR. YOUNG, Department of State, Washington, April 18th, 1911.

I ENCLOSE to you a redraft of Section III. of the Terms of Submission which you prepared at our conference on the 14th. After a more critical examination of the section it seemed to me that the important provision in relation to the exhaustion of legal remedies should be stated first. The section as redrafted I am convinced will meet the approval of the Department, while, in view of the importance of the provision extending thus the jurisdiction of the Tribunal, I could not advise its acceptance in the form in which it was drafted, even with the amendments which I telephoned to you, although the redraft in no way changes the principle. It is only a matter of the form, but one which seems to me important.

I am sending you the redraft this morning in order that it may be mailed to-day if you desire.

George Young, Esq.,  
British Embassy.

Sincerely yours,  
ROBERT LANSING.

\* No. 140.



DEAR MR. YOUNG, Department of State, Washington, April 17th, 1911.

I FEAR that I cannot comply with your request that the terms of submission, so amended as to meet the views of the United States, be communicated officially to your Embassy in time for transmission to London by to-morrow's mail. As you know, Mr. Anderson is spending Easter out of the city, and I understand that he will not return in time for me to take up the terms with him before Wednesday. I will, however, have a draft of reply to the Ambassador's note of April 3rd in your hands at the earliest possible time.

As I telephoned you on the 14th, it is my personal opinion that, with the changes which I then communicated to you, the draft of terms which you prepared during our conference that morning will be acceptable to the Department, as I think that they sufficiently extend the jurisdiction of the Tribunal to allow it to pass upon the merits of claims which would otherwise be withdrawn from consideration by the application of the general rule of international law in regard to the failure to exhaust the legal remedies furnished by municipal courts.

Sincerely yours,  
ROBERT LANSING.

George Young, Esq.,  
British Embassy.

III. The Arbitral Tribunal shall not disallow or reject any claim by applying to it the general principle of international law that a claim must be disallowed if a claimant has failed to exhaust the legal remedies which were open to him under or placed at his disposal by municipal law, but the Arbitral Tribunal shall take into account *as a matter of fact* to such extent as it shall consider just any such failure on the part of a claimant.

14681

No. 148.

## STRAITS SETTLEMENTS.

THE SECRETARY OF STATE to THE ACTING GOVERNOR.

(Sent 12.35 p.m., 10 May, 1911.)

[Answered by No. 178.]

(Paraphrase.)

10th May, 1911. Referring to your telegram of 6th April,\* you should inform Johore that in event of adverse award His Majesty's Government will pay the compensation awarded. Explain that it was essential to settle terms of Convention without delay, and that His Majesty's Government therefore agreed to inclusion of claim without consulting him, being confident that with his well-known loyalty to Great Britain he would have been ready to accept their view as to necessity of inclusion, and would acquit them of any intentional discourtesy.—HARCOURT.

14698

No. 149.

## NEWFOUNDLAND.

THE SECRETARY OF STATE to THE GOVERNOR.

(Sent 1.5 p.m., 10th May, 1911.)

TELEGRAM.

[Answered by No. 154.]

Your telegram, 17th April.† His Majesty's Government trust that your Ministers will see their way to withdraw objection to article in terms of submission Pecuniary Claims Treaty with regard to award of interest. Although provision as to award may not be to advantage of your Government, it seems to His Majesty's

\* No. 125A.

† No. 129.

Government difficult to argue against principle that interest should follow the award, and even without terms of submission interest (would) probably would be awarded by Commission, for this course has been commonly followed by Claims Commissions in the past. Amount awarded would not seem to be likely to be very great, since most of the claims of the United States against Newfoundland appear not to be of very long standing.

Please reply to me and inform Mr. Bryce simultaneously.—HARCOURT.

14560

No. 150.

## COLONIAL OFFICE to FOREIGN OFFICE.

[Acknowledged by No. 151.]

SIR,

Downing Street, 10 May, 1911.

I AM directed by Mr. Secretary Harcourt to acknowledge the receipt of your letter of the 4th of May,\* on the subject of the terms of submission to be attached to the Pecuniary Claims Agreement with the United States.

2. In reply, I am to request that you will inform Secretary Sir Edward Grey that Mr. Harcourt concurs in the views expressed by him with regard to the proposed terms of submission.

3. Mr. Harcourt, however, feels doubtful whether it would be advisable that the alteration proposed should be telegraphed to the Governor-General of Canada and the Governor of Newfoundland from this Office. Sir W. Laurier is leaving Canada for this country almost immediately, and Sir E. Morris has already started. It will, therefore, be difficult to obtain any decisive replies from either the Canadian or Newfoundland Government, and Mr. Harcourt would suggest that it would be sufficient if Mr. Bryce could be instructed to keep the Governments of Canada and Newfoundland informed of the changes in the terms of submission; this would give them the opportunity of objecting, and Mr. Harcourt would be prepared to consult Sir Wilfrid Laurier and Sir Edward Morris, on their arrival here, on any doubtful point.

4. I am to enclose, with reference to your letter of the 5th of May,† copy of a telegram‡ which has been addressed to the Governor of Newfoundland with regard to the terms of submission.

I am, &c.,  
C. P. LUCAS.

15470

No. 151.

## FOREIGN OFFICE to COLONIAL OFFICE.

(Received 13 May, 1911.)

[Answered by No. 163.]

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—Telegram to Mr. Bryce, No. 131, May 12: (Pecuniary Claims Convention with United States of America—"Terms of submission").

Reference to previous letter: Colonial Office, May 10 (14560/11).§

Foreign Office,  
May 12, 1911.

Enclosure in No. 151.

TELEGRAM to MR. BRYCE, Washington, Foreign Office, 12 May, 1911.  
(No. 131 (R).)

Your despatch, No. 111 (of April 14, Pecuniary Claims). Terms of submission.

His Majesty's Government cannot accept division of my second Article into two, because exhaustion of legal remedy should stand on exactly the same footing as

\* No. 140.

† No. 144.

‡ No. 149.

§ No. 150.



admission of liability. Moreover, wording of Article 3 as proposed in your despatch is ambiguous, and might be held to debar tribunal from rejecting a claim upon ground of non-exhaustion of legal remedy, in cases where they considered such a decision just after hearing all the facts and evidence.

I gather, however, that such is not the wish of the United States Government, but that they merely desire to guard against exhaustion of legal remedy being treated as a condition precedent to the establishment of the validity of a claim, absence of which would alone justify rejection.

To meet such a contingency I am prepared to accept an article in the following terms in place of Articles 2 and 3 as enclosed in your despatch:—

"An admission of liability by the Government against whom a claim is put forward or a failure on the part of the claimant to endeavour to obtain satisfaction through the legal remedies which were open to him or which were placed at his disposal, shall not be brought before the tribunal by the party alleging the same as a preliminary and separate issue, but shall be taken into account by the tribunal to such extent as it shall consider just when dealing with the claim upon its merits."

Amendments to last article respecting interest seem to leave sense unaltered, and are, therefore, accepted.

Substitution of word "tribunal" for "commission" throughout also accepted. Please inform Canada and Newfoundland of this change.

15714

No. 152.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 15 May, 1911.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—To Mr. Bryce, Washington, No. 213, May 12: (Pecuniary Claims Convention with United States of America.—Arbitral Tribunal.)

Reference to previous letter: Colonial Office, April 8 (10714/11).\*

Foreign Office,  
May 12, 1911.

Enclosure in No. 152.

(No. 213.)

SIR, Foreign Office, May 12, 1911.  
IN Your Excellency's despatch, No. 21, of January 17th last, you informed me that the United States Government objected to the appointment of Dr. Lammasch as neutral arbitrator on the Pecuniary Claims Tribunal.

Since then you will have learnt from the enclosure in my despatch No. 43 of February 8th last that I considered that this important post might with advantage be filled by the appointment of Monsieur Fromageot, and that I invited the Colonial Office to endeavour to secure the assent of the Canadian and Newfoundland Governments to his nomination.

The Colonial Governments concerned have now accepted this proposal, and you are therefore authorised to suggest to the United States Government the name of Monsieur Fromageot, whose qualifications for the appointment in question will be found in paragraph 3 of my letter to the Colonial Office above referred to, and to invite their concurrence in this selection.

I am, &c.  
(for the Secretary of State),  
F. A. CAMPBELL.

His Excellency  
The Right Honourable James Bryce, O.M.,  
&c., &c., &c.

\* No. 127.

15715

No. 153.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 15 May, 1911.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following papers:—Mr. Bryce, Washington, No. 122, April 22, to Mr. Bryce, No. 214, May 12: (Pecuniary Claims Convention with United States of America—"Classification" of claims).

Reference to previous letter: Foreign Office, April 1.\*

Foreign Office,  
May 12, 1911.

Enclosure 1 in No. 153.

(No. 122.)

SIR, British Embassy, Washington, April 22nd, 1911.  
AN opportunity has been taken of ascertaining the views of the State Department in regard to the system of classifying claims in the schedule annexed to the Pecuniary Claims Convention in view of the objections raised to this arrangement in your telegram, No. 92, of the 31st ultimo.

It was found that the responsible officials were disposed to deprecate somewhat strongly the abandonment of this arrangement. They considered it valuable, as anticipated in my telegram No. 50 of 31st March, as tending to render the schedule more acceptable to the Senate. Not only had this arrangement made it possible to present the appearance of an equipoise of interests; but it was hoped that the average Senator would not penetrate further into the schedule than the descriptive headings of the classes of claims. Having satisfied himself that these were unobjectionable he would not enquire into the claims themselves. They did not apprehend any risk of these descriptive headings being read by the tribunal as in any way ruling their proceedings, and thought such a contention would not even be worth raising by counsel.

They did not seem to attach primary importance to the retention of the arrangement, but hoped that it would be allowed to stand unless there be some cogent reason for giving it up. They would make any alterations required in the wording of the headings.

Sir Edward Grey, Bart., M.P.,  
&c., &c., &c.

I have, &c.,  
JAMES BRYCE.

Enclosure 2 in No. 153.

(No. 214.)

SIR, Foreign Office, May 12, 1911.  
I NOTE with satisfaction from Your Excellency's despatch, No. 122, of the 22nd ultimo, that the United States Government are ready to make any alterations that may seem to be required in the wording of the headings to the categories of the pecuniary claims.

It would, however, be impossible to alter the headings to meet the objections of His Majesty's Government without specifying therein all the points or questions arising out of the claims.

Such an arrangement would doubtless deprive the classification of any utility which it may possess in facilitating the passage of the agreement through the Senate.

I therefore request that you will endeavour to obtain from the United States Government a written assurance that the headings are not intended to limit the

\* No. 118.



jurisdiction of the tribunal, nor to confine the discussion of the claim to the point specified in the heading of the category in which the claim occurs.

I am, &c.,  
(For the Secretary of State),  
F. A. CAMPBELL.

His Excellency the  
Right Honourable James Bryce, O.M.,  
&c., &c., &c.

15752

No. 154.

NEWFOUNDLAND.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 9.30 p.m., 13th May, 1911.)

TELEGRAM.

[Copy to Foreign Office, 15 May, 1911. L.F. See No. 156.]

[Answered by No. 164.]

Your telegram 10th May.\* My Ministers agree that Commission may include in its award interest at rate not exceeding 4 per cent. per annum, as suggested in telegram of Secretary of State for the Colonies received April 3rd.† His Majesty's Ambassador at Washington has been informed.—WILLIAMS.

14864

No. 155.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(No. 356.)

MY LORD,

Downing Street, 16 May, 1911.

I HAVE the honour to acknowledge the receipt of your Excellency's despatch, No. 150, of the 22nd of March,‡ on the subject of the payment of the expenses of the tribunal in connection with the Pecuniary Claims Convention with the United States of America.

2. In reply, I have to request you to inform your Ministers that it is proposed that the contribution by His Majesty's Government towards the expenses of the tribunal should be subject to the deduction of the amounts recovered from claimants, but it is not anticipated that these amounts will be at all considerable. Further, if the services of the Canadian Judge are utilised by any self-governing Dominion other than Canada, that Dominion will be expected to pay the remuneration and expenses of the Judge in respect of those claims, but such payment will not be claimed from any Crown Colony or Protectorate, or in any case when the claim will be met from the funds of His Majesty's Government.

I have, &c.,  
L. HARCOURT.

16461

No. 156.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 20 May, 1911.)

[Answered by L.F. transmitting copy of No. 164.]

SIR,

Foreign Office, May 19, 1911.

I AM directed by Secretary Sir E. Grey to acknowledge receipt of your letter of the 15th instant§ respecting the assent of Newfoundland to the interest clause in the terms of submission.

\* No. 149.

† No. 121.

‡ No. 119.

§ L.F. transmitting copy of No. 154.

I am to suggest, for the consideration of the Secretary of State for the Colonies, that an expression of appreciation of their readiness to accept the views of His Majesty's Government might be sent to the Newfoundland Government.

I am, &c.,  
F. A. CAMPBELL.

16911

No. 157.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 24 May, 1911.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following paper:—Mr. Bryce, May 6: Pecuniary Claims Convention: Claims against Canada.

Foreign Office,  
May 23, 1911.

Enclosure in No. 157.

SIR,

Government House, Ottawa, May 6th, 1911.

I HAVE the honour to inform you that in several interviews I have had here in Ottawa with Sir Wilfrid Laurier and Sir A. B. Aylesworth, the Dominion Minister of Justice, the question of the claims affecting Canada which the United States Government has been seeking to include in the Pecuniary Claims Agreement has been discussed at some length. These discussions turned chiefly upon the Atlin Claims. Both Ministers, while stating forcibly their objections to the claims as presented in general terms by the United States Government, expressed themselves as ready to consider the possibility in principle of admitting such of these claims as could be shown to be based upon any injury done to any real and tangible vested interests of United States citizens by the legislation of British Columbia, which has been made the foundation of these claims. Sir A. B. Aylesworth suggested that the United States Government should be asked for a detailed statement of these claims, showing the persons making them and the facts on which each is based, adding that as the liability, should any be admitted, would naturally and primarily fall upon the Province of British Columbia, it was essential that before the Dominion Government communicated with the Provincial authorities, the former should be in possession of these details and able to lay them before the authorities aforesaid.

This seems eminently reasonable, and I accordingly propose, as soon as I reach Washington, to ask the United States Government for all the data they can supply. If they find it impossible to supply the data in time to determine whether the claims, or any of them, can properly be included in the first schedule, there will remain the possibility of including them in the second or any later schedule.

I gathered from Sir Wilfrid Laurier and Sir A. B. Aylesworth that there need not be any insurmountable difficulties, so far as they at present had considered the matter, regarding the other claims against Canada lately put forward by the United States; for though no formal decision was reached regarding these, both Ministers recognize the desirability of including any claims for which a fair case can be made, especially as the claims of Canada against the United States are both more numerous and better founded than those of the United States against Canada; so that it is likely that the result of the arbitration will work to the pecuniary advantage of Canada rather than to that of the United States. As respects the questions of the terms of submission suggested by the United States, I gathered that the Canadian Ministers are awaiting a further expression of your views regarding the alteration proposed to be made in those terms.

I have, &c.,  
JAMES BRYCE.

Sir E. Grey, Bart., M.P.,  
&c., &c., &c.



17029

No. 158.

## FOREIGN OFFICE to COLONIAL OFFICE.

(Received 25 May, 1911.)

[Answered by No. 162.]

Sir, Foreign Office, May 24th, 1911.  
 With reference to my letter of the 19th instant,\* and previous correspondence, I am directed by Secretary Sir E. Grey to transmit to you herewith copy of a telegram from His Majesty's Ambassador at Washington respecting the pecuniary claims negotiations with the United States.

As regard the schedules, the arrangement now proposed by the United States Government appears to be as follows:—

The Atlin and South African war claims not to be included in the first schedule but to stand over for further consideration.

The Philippine war claims and Canadian hay claims to be admitted into the first schedule provided His Majesty's Government will consent not to present the Southern Bonds and Philippine Customs claims for arbitration under the Convention.

The Clarke and Cayuga Indians claims to be either both admitted to the first schedule or both to stand over for further consideration.

No Colonial interests are concerned in the Southern Bonds and Philippine Customs claims. It will therefore be sufficient for the purposes of the Secretary of State for the Colonies to state that Sir E. Grey does not propose to take the action suggested by the United States Government, which would have the effect of definitely barring those claims for ever. The result of this, presumably, will be that the United States Government will refuse to admit the Philippine war and Canadian hay claims.

The list of claims excluded by either side will then stand as follows:—

By the United States Government: The Philippine war claims, the Philippine Customs claims, the Southern Bonds claims, the Canadian hay claims, and possibly the Cayuga Indians claim.

By His Majesty's Government: The South African war claims, the Atlin claims, and possibly the Clarke claim.

Although not prepared to abandon the Southern Bonds and Philippine Customs claims altogether, Sir E. Grey will consent to defer their consideration for the moment. He is also ready, as Mr. Harcourt is aware, to agree to the exclusion from the first schedule of the Philippine war claims in return for the corresponding exclusion of the South African war claims. He understands that such an arrangement would be acceptable to the United States Government, to whom, indeed, it would, in his opinion, be not unfavourable.

The only remaining claims reserved would then be those against Canada, namely, Atlin and Clarke, and those by Canada, namely, the hay and Cayuga Indians.

Sir E. Grey would therefore be obliged if the Canadian Government could be requested by telegraph to inform His Majesty's Government whether they are willing to consent to the inclusion of one or both of the claims against them in return for the inclusion of one or both of their claims against the United States Government.

In this connexion I am to state that Sir E. Grey thinks that it would be better to keep the claims by and against Canada separate from those by and against the Imperial Government, and he feels that it would not be desirable to attempt to secure the exclusion of any United States claim against Canada by excluding a British non-Canadian claim against the United States, and *vice versa*.

Nor is he prepared, as at present advised, to ask the sanction of the Lords Commissioners of the Treasury to the treatment of the Clarke claim as an Imperial liability. As far as he is aware, no such course has been proposed by the Canadian Government, and he would strongly deprecate any mention of it to that Government.

He would be obliged if the above considerations could be borne in mind in telegraphing to the Canadian Government, and he would be glad if the latter could

\* No. 156.

at the same time be requested to furnish details of their "additional fishery" claims mentioned by Mr. Bryce, as he was not aware that they had any fishery claims, properly so-called, against the United States Government.

As regards the terms of submission, Sir E. Grey sees no reason to depart from the conclusions reached after most careful consideration by representatives of your Department and this Department, and he proposes, with Mr. Harcourt's concurrence, to address to Mr. Bryce the telegram draft of which is enclosed herewith.

I am, &c.,  
 W. LANGLEY.

Enclosure 1 in No. 158.

(No. 65.)

Washington, May 20, 1911.

Claims.

Protocol of informal negotiations as to first schedule. Have reached following result, which the United States Government are prepared to confirm formally:—

First schedule to remain broadly as recorded in notes exchanged 3rd March. South African and Atlin claims reserved for further discussion, and the United States Government renounce exclusion of Philippine war claims and the hay claims already admitted. In return they will ask formally that we renounce presentation of Southern Bond claims, and hope that we will not insist on arbitration under this agreement of Philippine Customs claims recently presented. If Canada wishes Samuel Clarke claim reserved for second schedule Cayuga Indians will also be reserved. But perhaps you will prefer to make Clarke claim an Imperial liability, should Canada raise difficulties. It is analogous in this respect to the Webster claim.

United States Government will admit three additional Canadian fishery claims if Canada will admit two American. Newfoundland has already consented to admit certain additional claims.

Four omitted Philippine war claims have been admitted. We may also get in Clarke claim.

As to terms of submission, they obstinately refuse form proposed in your telegram No. 131 on the ground that they have made all the concessions they think proper, and if no difference is involved they prefer their wording. Best we can do is to get accepted wording suggested in my despatch No. 111 without emendations reported in my despatch No. 120.

These terms are on the whole so unexpectedly favourable to us, and further delay is so dangerous to agreement, that I would strongly urge their immediate acceptance. We have only got them by severe pressure. It is particularly important to get this out of the way of the general arbitration treaty.

Enclosure 2 in No. 158.

Draft telegram to Mr. Bryce.

Your telegram, No. 65.

Is it proposed that His Majesty's Government should (1) renounce definitively the right to put forward the Southern Bonds claims; and (2) agree to drop the Philippine Customs claims under the present agreement, in return merely for the reservation of the South African war and the Atlin claims?

If so, the proposal is far from favourable, and it would be impossible in any case for us to comply without consulting the Bondholders Committee who are now engaged in an examination of the Southern Bonds claims. This would lead to great delay and create a most difficult situation for us. Please supply further information as to additional American fishery claims against Canada, of which we are ignorant.

As to the terms of submission, we are not asking for a concession. The terms were proposed by the United States Government quite unexpectedly, and in our view are unnecessary. We, nevertheless, consented to consider them if the wording could be modified, and it is we who are making the concession in accepting them at all. We understood from Your Excellency's despatch No. 111 that the object



of the State Department was to secure that a failure to have exhausted legal remedies should only be taken into account by the Tribunal, as one of the equities of the claim, and that an exhaustion of legal remedies should not be treated by the Tribunal, as a condition precedent to the validity of a claim, failure to comply with which would alone justify its rejection. Any wording which would secure this object—which is also that of His Majesty's Government—would be acceptable to us, but the wording suggested in your despatch No. 111 is open to misconstruction, as explained in my telegram No. 131, and we do not feel justified in taking the risk involved by ambiguous drafting. Admission of liability should be treated in the same way as non-exhaustion of legal remedies. We are most desirous of completing this negotiation, and feel convinced that the State Department will be able to meet our wishes if the position is frankly explained to them, especially as the object of both Governments is presumably the same.

17029

No. 159.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Sent 7.30 p.m., 26th May, 1911.)

TELEGRAM.

[See No. 171.]

Schedules to the Pecuniary Claims Convention now being finally agreed upon. United States Government are not prepared to admit hay claims and Cayuga Indians claims, but they might be willing to do so if Atlin and Clarke claims were admitted. Please inform me whether your Government are prepared to admit either or both of these claims in return for admission of either or both of the Canadian claims. I understand from Bryce that your Government has put forward three additional Canadian fishery claims; please give particulars of these claims.—HARCOURT.

17506

No. 160.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 10.45 p.m., 28th May, 1911.)

TELEGRAM.

[Answered by No. 166.]

Pecuniary claims; referring to Bryce's despatch to me, No. 58, 17th April,\* enclosing draft terms of submission, my Ministers anxious to obtain views of His Majesty's Government. Despatch follows by mail.—GREY.

17560

No. 161.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 30 May, 1911.)

[Answered by No. 163.]

SIR,

I AM directed by Secretary Sir E. Grey to transmit to you, herewith, paraphrase of a telegram from His Majesty's Ambassador at Washington respecting the pecuniary claims negotiations.

\* Not printed.

Sir E. Grey would be glad to receive an answer as soon as possible to the letter from this Department of the 24th instant.\*

I am, &c.,  
LOUIS MALLET.

Enclosure in No. 161.

Paraphrase of telegram from Mr. BRYCE to FOREIGN OFFICE, No. 69, dated 26th May, 1911.

I have received a note from the United States Government formally submitting the terms of submission as telegraphed in my telegram, No. 65, of May 20.

They argue their views at great length, and I feel sure that there would be great delay in obtaining any further concessions on this point. In accordance with request contained in your despatch, No. 214, of May 12th, they agree to insertion of reserves as to classification of claims in exchange of notes finally recording agreement. I hope your reply about the schedule and terms will not be long delayed, as I am awaiting it before submitting them to Canada.

17029

No. 162.

COLONIAL OFFICE to FOREIGN OFFICE.

SIR,

Downing Street, 29 May, 1911.

I AM directed by Mr. Secretary Harcourt to acknowledge the receipt of your letter of the 24th of May,\* and in reply to transmit to you, for the information of Secretary Sir E. Grey, copy of a telegram† which has been addressed to the Governor-General of Canada on the subject of the Pecuniary Claims Convention with the United States of America.

2. I am to add that Mr. Harcourt concurs in the terms of the proposed letter to Mr. Bryce, a draft of which accompanied your letter.

I am, &c.,  
H. W. JUST.

17506

No. 163.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by No. 165.]

SIR,

Downing Street, 31 May, 1911.

WITH reference to your letter of the 12th of May,‡ I am directed by Mr. Secretary Harcourt to transmit to you, to be laid before Secretary Sir Edward Grey, copy of a telegram§ from the Governor-General of Canada on the subject of the Pecuniary Claims Convention with the United States of America.

2. Mr. Harcourt presumes that Mr. Bryce will by this time have communicated with Canada and Newfoundland in the sense of Sir Edward Grey's telegram of the 12th of May, a copy of which was enclosed in your letter under reference, and he proposes, therefore, with the concurrence of Sir Edward Grey, to telegraph to the Governor-General of Canada in the terms of the draft which is enclosed in this letter.

I am to take this opportunity of acknowledging the receipt of your letter of the 29th of May,|| and of referring to the letter from this Department of the same date,¶ which answered your letter of the 24th instant.\*

I am, &c.,  
C. P. LUCAS.

\* No. 158. † No. 159. ‡ No. 151. § No. 160. || No. 161. ¶ No. 162.



Enclosure in No. 163.

The SECRETARY OF STATE to the GOVERNOR-GENERAL OF CANADA.

TELEGRAM.

(Draft.)

Your telegram 28th May. His Majesty's Government are not able to accept terms of submission as drafted by Ambassador, but have sent Mr. Bryce instructions to discuss question further with United States, and have asked him to communicate with you on this subject.

16461

No. 164.

NEWFOUNDLAND.

THE SECRETARY OF STATE to the GOVERNOR.

[Copy to Foreign Office, 2 June, 1911. L.F.]

(No. 122.)

SIR,

Downing Street, 31 May, 1911.

I HAVE the honour to acknowledge the receipt of your telegram of the 13th of May\* on the subject of the Pecuniary Claims Convention.

2. I request that you will convey to your Ministers an expression of my appreciation of their readiness to accept the views of His Majesty's Government in this matter.

I have, &c.,  
L. HARCOURT.

18312

No. 165.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 5 June, 1911.)

[Answered by L.F. transmitting copy of No. 166.]

SIR,

Foreign Office, June 3rd, 1911.

WITH reference to your letter, 17506, of the 31st ultimo,† I am directed by Secretary Sir E. Grey to state that, in view of the last sentence of Mr. Bryce's telegram, No. 69, of May 26th (enclosure in my letter of May 28th‡), he doubts whether His Excellency has yet communicated to the Colonial Governments the views with regard to the terms of submission contained in the telegram of May 12th§ from this Office.

I am to suggest for the consideration of the Secretary of State for the Colonies, that the Canadian Government should be informed that His Majesty's Government have concluded no agreement about the terms of submission, but are awaiting receipt of a note on the subject from the United States Government.

I am, &c.,  
LOUIS MALLET.

18312

No. 166.

CANADA.

THE SECRETARY OF STATE to the GOVERNOR-GENERAL.

(Sent 3.50 p.m., 7 June, 1911.)

TELEGRAM.

[Copy to Foreign Office, 7 June, 1911. L.F.]

Your telegram 28 May.‖ His Majesty's Government have not yet concluded any agreement as to terms of submission, but are awaiting receipt of a note on the subject from the United States Government. Further communication will be made to you in due course.—HARCOURT

18972

No. 167.

CANADA.

THE GOVERNOR-GENERAL to the SECRETARY OF STATE.

(Received 10 June, 1911.)

[Copy to Foreign Office, June 14, 1911. L.F.]

(No. 321.)

SIR,

Government House, Ottawa, 31 May, 1911.

WITH reference to my telegram of the 27th May,\* on the subject of the draft terms of submission in connection with the Pecuniary Claims Arbitration, I have the honour to transmit herewith, for your consideration, copies of an approved minute of His Majesty's Privy Council for Canada, upon which my telegram was based.

I have, &c.,  
GREY.

Enclosure in No. 167.

CERTIFIED COPY of a Report of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 24th May, 1911.

(P. C. 1110.)

The Committee of the Privy Council have had before them a report, dated 9th May, 1911, from the Secretary of State for External Affairs, to whom was referred a despatch, dated 17th April, 1911, from His Majesty's Ambassador at Washington, in which were enclosed draft terms of submission in connection with the Pecuniary Claims Arbitration, which had been accepted by the United States Government, and which Mr. Bryce hoped might be regarded as satisfactory by Your Excellency's advisers.

The Minister states that the Minister of Justice is of opinion that having reference to the correspondence upon this subject which has already taken place with the Right Honourable the Principal Secretary of State for the Colonies, enquiry should be made by cable to ascertain the views of Mr. Harcourt in the matter.

The Committee, on the recommendation of the Secretary of State for External Affairs, advise that Your Excellency may be pleased to communicate with the Right Honourable the Principal Secretary of State for the Colonies in the sense indicated by the Minister of Justice.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,  
Clerk of the Privy Council.

19056

No. 168.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 12 June, 1911.)

[Answered by L.F. transmitting copy of No. 171.]

SIR,

Foreign Office, June 10th, 1911.

I AM directed by Secretary Sir E. Grey to transmit to you herewith copies of telegraphic correspondence with His Majesty's Ambassador at Washington respecting the schedule to the Pecuniary Claims Agreement.

Sir E. Grey would be obliged if the Canadian Government could be urged to send an answer to Mr. Bryce's telegram as soon as possible.

I am to add that that part of His Excellency's telegram which refers to the terms of submission is being dealt with separately.

I am, &c.,  
W. LANGLEY.



Enclosure 1 in No. 168.  
Mr. BRYCE to Sir EDWARD GREY  
(Received June 6.)

(No. 80.)

Washington, June 6, 1911.

Your telegram, No. 157 [of 3rd June: Pecuniary Claims Convention].

Clauses as to admission of liability and exhaustion of legal remedies seem to be on same footing as being embodied in the same agreement, succeeding each other and in identical terms as far as nature of matter permits. In this connection the United States Government will accept if you wish addition of words "in allowing or disallowing a claim" in Clause (2) as to liability so as to further assimilate it to Clause (3).

Canada has always strongly objected to Atlin claims, and though Minister of Justice has in conversation said that some might possibly be admitted on proper evidence, matter will require much negotiation. No Canadian claim is reserved except balance of Hay claims as originally arranged (see despatch to Canada enclosed in my despatch, No. 64). But if Canada reserves Clarke's claim it will be necessary to let Cayuga Indians also be reserved.

Following sent to Canada to-day:—

"Pecuniary claims.

"With much trouble we have succeeded in keeping schedule as reported in my despatch, No. 25, and agreed in your telegram of 21st February. Atlin claims are reserved for further discussion. If Canadian Government wish similarly to reserve Clarke's claim we shall have to reserve Cayuga claim also. Do you wish these two reserved or inserted? We have inserted following Canadian fishery claims: T. F. Baya, Jessie, and Pescawha (see my despatch, No. 64); and following American fishery claims: Argonaut and J. H. French. They have agreed to drop L. A. Tarr and D. Crocket.

"Foreign Office have made some minor alterations in the terms of submission, but I assume the Dominion Government will be satisfied with their version.

"I should be glad to know about Clarke's claim as soon as possible, as all other points seem now to be settled."

Enclosure 2 in No. 168.

Sir EDWARD GREY to Mr. BRYCE (Washington).

(No. 159.) R.

Foreign Office, June 9, 1911, 5.40 p.m. Your telegram, No. 80 [of 6th June: Claims].

Please telegraph home full list of claims on either side admitted to the schedules before the latter are definitely signed and completed.

I presume that there are two distinct "T. F. Bayard" claims, one against Newfoundland and one by Canada against the United States.

19186

No. 169.

SIERRA LEONE.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 12 June, 1911.)

[Answered 25 July, 1911; 22149 in Dominions No. 41.]

(Confidential.)

SIR,

Government House, Sierra Leone, 29th May, 1911.

I HAVE the honour to acknowledge the receipt of your Confidential despatch of the 25th ultimo,\* on the subject of two claims for compensation, arising out of the Sierra Leone Insurrection of 1898, which have been presented by the Government of the United States of America.

2. In reply I have the honour to state that no correspondence can be traced with reference to claims by the Home Frontier and Foreign Missionary Society of the United Brethren in Christ or by Daniel Johnson, and as regards the former case

\* No. 134.

I have ascertained from the representative of the Society in Freetown that no claim has ever been sent in by the Society through the Government of the Colony.

3. I would also refer you to Mr. Chamberlain's despatches, No. 128, of the 7th July, 1898, and No. 170, of the 25th August, 1898,\* in which it was laid down that neither Her Majesty's Government nor the Government of Sierra Leone could entertain any claims for compensation for losses incurred during the disturbances. The same reply was given to the Liverpool Chamber of Commerce when that body applied, on behalf of "merchants and others," for compensation. (Vide Mr. Wingfield's despatch, No. 172, of the 1st September, 1898.†)

4. I may add that among the claims which were presented in 1898, and which Her Majesty's Government refused to entertain, were three claims from missionary societies, namely, the American Soudan Mission, the Roman Catholic Mission, and the United Brethren Mission.

5. In the absence of any documentary evidence regarding the two claims now put forward by the Government of the United States of America, it is possible that some information might be given by Sir F. Cardew, or by Major Fairtlough, District Commissioner of the Northern Sherbro District, who is now at home on leave.

6. In conclusion, I deem it my duty to point out that if the two claims now put forward are entertained, all the other claims made in 1898 will be revived, and it will be extremely difficult, after a lapse of thirteen years, to ascertain whether any of them have any real foundation.

I have, &amp;c.,

E. M. MEREWETHER,

Governor.

19056

No. 170.

CANADA.

THE SECRETARY OF STATE to THE GOVERNOR-GENERAL.

(Sent 4 p.m., 13 June, 1911.)

TELEGRAM.

[Copy to Foreign Office, 14 June, 1911. L.F.]

[Answered by No. 171.]

Secretary of State for Foreign Affairs hopes your Government will send very early reply to Bryce's telegram 6 June,‡ pecuniary claims schedule.—HARCOURT.

19653

No. 171.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 8.45 p.m., 14th June, 1911.)

TELEGRAM.

[Copy to Foreign Office, 16 June, 1911. L.F.]

Pecuniary Claims. Your telegram 13th June§ following sent to His Majesty's Ambassador, Washington, June 12th:—

"Your telegram 5th June and your telegram 8th June: Government of Canada would like Cayuga claim inserted and are willing that Clark claim should be included also."

—GREY.

19725

No. 172.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 16 June, 1911.)

The Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the following papers:—Mr. Bryce, Telegram 85,

\* 14591 and 18311: not printed.

‡ See Enclosure 1 in No. 168.

† 19267: not printed.

§ No. 170.



June 12; to Mr. Bryce, Telegram 164, June 14: Pecuniary Claims Convention: First Schedule.

Reference to previous letter: Foreign Office, June 10, 1911.\*

Foreign Office,  
June 15, 1911.

Enclosure 1 in No. 172.

Mr. BRYCE to Sir EDWARD GREY.

(Received June 13, 8 a.m.)

(No. 85.)

Washington, June 12, 1911. Your telegram No. 159.

It would be very expensive to cable list of claims in schedule, but following [group undecypherable] schedule as now arranged.

It is in four classes, and is identic in form and contents with that enclosed in my despatch, No. 44, of 14th February, and then approved, except in following details:—

In Class 1 add Clarke's claim, as Canada telegraphs assents to this.

In Class 2 add fishery claims, reported in my despatch No. 105 of 11th April, to which Newfoundland has assented; also following approved by Canada: Argonaut and J. H. French; and following Canadian claims: T. F. Bayably, Jessie, and Peschawa.

In Class 3 add two Chienc claims, Parson and Walker, as requested by us.

Class 4 unchanged.

Canada and Newfoundland now satisfied, and I only await your approval of these additions.

Enclosure 2 in No. 172.

Sir EDWARD GREY to Mr. BRYCE (Washington).

(No. 164.)

Foreign Office, June 14, 1911, 3 p.m. Your telegram, No. 85 [of 12th June: Pecuniary Claims Convention].

Schedule as given in your despatch No. 44 [of 14th February] contains South African claims, which are to be excluded. I presume these are now omitted.

Are Hanserd's and Clarkin's claims included?

Please send full list of claims in schedule as now arranged by next post.

19832

No. 173.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 17 June, 1911.)

The Under Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State for the Colonies, and, by direction of the Secretary of State, transmits herewith copy of the under-mentioned papers: Washington, 149, May 30: To Washington, telegram, 158, June 9: Washington, telegram, 87, June 11: To Washington, telegram, 162, June 13: (Claims Convention: Terms of submission).

Foreign Office, -

June 16, 1911.

Enclosure 1 in No. 173.

(No. 149.)

Sir,

British Embassy, Washington, May 30, 1911.

In my telegram, No. 69, of the 25th instant, I have the honour to report that it had not been possible to secure from the United States Government acceptance of Section II. of the terms of submission as proposed by His Majesty's Government, and that I did not think that, in this respect, further concessions were obtainable without more delay than the advantage to our interests would be worth. I have now received from the United States Government the note copy of which is enclosed, which develops fully the policy they have in view in objecting to our amendments.

\* No. 168.

I hope that before this reaches you the matter may have been settled on general grounds; but the note is of importance as putting on record the interpretation assigned by the United States Government to the terms of submission on this point.

The draft now proposed by them is the same as that submitted in the telegram above-referred to.

I have, &c.,

JAMES BRYCE.

The Right Honourable

Sir Edward Grey, Bart., M.P.,

&c., &c., &c.

EXCELLENCY,

Department of State, Washington, May 22, 1911.

I HAVE had under consideration the draft of terms of submission of claims to be submitted to the proposed arbitral tribunal, pursuant to the Special Agreement of August 18, 1910, which draft was enclosed in your note of April 3rd last; and I have the honour to inform you that this Government, while believing that the draft of terms which was enclosed in my note of March 4 more fully defines the principles which should govern the submission, is willing, in order to reach an early agreement, to adopt the general form of terms as proposed by His Majesty's Government, with the exception of Section II. of the draft.

The objectionable feature of Section II. is contained in the provision therein made which would allow the Arbitral Tribunal to disallow a claim without considering the merits involved by applying to it the general rule of international law: that a claimant before acquiring a standing in an international court must exhaust the legal remedies provided by municipal law.

The negotiation of a schedule of the claims to be submitted to the Arbitral Tribunal has proceeded, according to the understanding of this Government, upon the basis that the claims included in the schedule were to be determined upon the principles of justice fixing liability and upon the merits, and that the jurisdiction of the Tribunal was not to be limited by the application of technical rules of international law, except in so far as they are applicable to claims which are alleged to be barred by previous treaties, and particularly by the Claims Convention of 1853.

The question as to whether or not a claim is barred by previous treaty is one which involves careful scrutiny, and is properly the subject of a judicial determination. For this reason, and in order that there may be no doubt in the minds of the arbitrators that they are called upon to decide whether such bar exists, a special provision directing such decision has been made by the two Governments in their respective drafts of terms of submission.

But the same reason for submission to the Tribunal cannot be urged in regard to a plea that a claimant has not exhausted his remedies in the municipal courts. That is a fact which, if it exists, must be manifest to both Governments. It requires no judicial tribunal to determine it. If, then, a claim which would be unquestionably disallowed or rejected by the strict application of the general rule of international law as to the necessity of exhausting legal remedies is by mutual consent placed in the schedule, it would be paradoxical to permit the Tribunal to disallow or reject it on a ground of which both Governments were fully cognizant at the time it was included in the schedule, and which they knew would operate as a bar to a consideration of the merits of the case.

It is presumed that it is the desire of the Government of Great Britain, as it is that of the Government of the United States, that, in order to expedite the settlement of a claim which might properly be prosecuted through the channels of national justice, it is, by including it in the schedule, withdrawn from the jurisdiction of the municipal courts, and jurisdiction conferred upon the proposed international tribunal to decide the case upon its merits. But by no rule of international law would the mere inclusion of a claim in the schedule permit the Arbitral Tribunal to pass upon its merits. On the other hand the Tribunal would be bound to apply the accepted rule, denying to an international court jurisdiction over a case as to which the remedies of municipal law have not been exhausted. The necessity, therefore, of an express provision extending the jurisdiction of the Arbitral Tribunal to the merits of claims which would be barred by the application of the customary rule is evident, and this Government feels constrained to insist that this restrictive rule should not be applied to any claim included in the schedule, and that a provision should be made in the terms of submission expressly prohibiting its application.

Although insisting upon the non-application of the rule for the reasons above



stated, this Government nevertheless recognizes that, under certain conditions, the *laches* of a claimant, in prosecuting his claim in the municipal courts, may become material in mitigation of the indemnity to be awarded in case liability is found. In view of this recognition of materiality, it is considered proper that the fact of failure to prosecute a claim in the municipal courts may be presented to the Arbitral Tribunal solely as a matter of evidence in determining the amount of indemnity which would be equitable.

I have the honour, therefore, to submit for the consideration of His Majesty's Government a revised draft of terms of submission which embody the provisions which this Government considers appropriate and necessary.

His Excellency

The Right Honourable James Bryce, O.M.,  
Ambassador of Great Britain.

I have, &c.,

P. C. KNOX.

#### TERMS OF SUBMISSION.

I. In case of any claim being put forward by one party, which is alleged by the other party to be barred by treaty, the Arbitral Tribunal shall first deal with and decide the question whether the claim is so barred, and in the event of a decision that the claim is so barred, the claim shall be disallowed.

II. The Arbitral Tribunal shall take into account to such an extent as it shall consider just any admission of liability by the Government against whom a claim is put forward.

III. The Arbitral Tribunal shall take into account to such extent as it shall consider just any failure on the part of the claimants to obtain satisfaction through legal remedies which are open to him or placed at his disposal, but no claim shall be disallowed or rejected by application of the general principle of international law that the legal remedies have not been exhausted.

IV. The Arbitral Tribunal, if it considers equitable, may include in its award, in respect of any claim, interest at a rate not exceeding four per cent. per annum for the whole or any part of the period between the date when the claim was first brought to the notice of the other party and that of the confirmation of the schedule in which it is included.

Enclosure 2 in No. 173.

PARAPHRASE OF TELEGRAM to Mr. BRYCE, Washington.

(No. 158.)

Foreign Office, June 9th, 1911.

I have had under consideration your telegram, No. 80, of June 6, and your despatch, No. 149, of May 30.

When writing their note of May 22nd, the State Department were clearly not in possession of the latest version of my proposals telegraphed to you on May 12th, as their principal objection to my proposal of April 1st is thereby met.

I do not see why the nature of the matter should prevent the two clauses being treated identically, nor do I follow your argument that they are placed on the same footing.

If there is really no difference in our views, why should not the State Department accept my version, which is simpler and better drafted?

I should like to be clearly informed as to whether I am right in thinking that the real object of the State Department is to secure the possibility of bringing "admissions of liability" separately before the Tribunal, and not treating them as one of the equities of the claim only.

Enclosure 3 in No. 173.

MR. BRYCE to SIR EDWARD GREY.

(Received June 12, 8 a.m.)

(No. 87.)

Washington, June 11, 1911.

Your telegram, No. 158, of June 9th.

State Department were repeatedly urged to accept version in your telegram of 12th May, and refused, as reported in my telegram, No. 65, May 20th. Their

note did not refer to it because they wished to avoid controversial argument, as requiring reply and involving delay. They consider subjects of paragraphs 2 and 3 sufficiently different to make different paragraphs proper, and that our wish that both be on a similar footing in respect of treatment by Tribunal is not prejudiced thereby. They consider question merely one of wording, but prefer theirs. There is no reason to believe that they have any object such as suggested in your telegram. Would it meet your views to insert in paragraph 2 after "account" words "as one of equities of the claim"? If so, I think that State Department might agree.

Are the additions to paragraphs 3 and 2 proposed in my telegrams, Nos. 78 and 80, June 1st and 6th, respectively also required? It is very desirable to settle these drafting points finally now, as State Department have been growing impatient and even suspicious of some undisclosed purpose. Moreover, further loss of time may endanger agreement for this session.

Enclosure 4 in No. 173.

PARAPHRASE OF TELEGRAM from FOREIGN OFFICE to Mr. BRYCE, No. 162, dated June 13th, 1911.

Terms of submission.—Your telegram, No. 87, of June 11th.

In view of the efforts which you have made to secure my version, I will not further insist upon it. I should, however, like to have inserted the additions proposed in your telegrams, Nos. 78 and 80, of June 1st and June 8th, as well as the words "as one of the equities of the claim."

20244

No. 174.

CANADA.

THE GOVERNOR-GENERAL to THE SECRETARY OF STATE.

(Received 10.15 p.m., 19th June, 1911.)

TELEGRAM.

[Copy to Foreign Office, June 26, 1911. L.F.]

Pecuniary Claims Convention. Following telegram sent to His Majesty's Ambassador, Washington, to-day:—

"Your telegram 17th June. Claims Convention. Have consulted Minister of Justice, who is quite content with Foreign Office amendments in terms of submission. No objection to exchange of notes to-day; have informed Colonial Office."

—GREY.

19186

No. 175.

COLONIAL OFFICE to FOREIGN OFFICE.

[Answered by 22149 in *Dominions* No. 41.]

SIR,

Downing Street, 20 June, 1911.

With reference to your letter of the 4th of May,\* relating to the claims of the United Brethren in Christ Mission and of Daniel Johnson, I am directed by Mr. Secretary Harcourt to transmit to you, for any observations which Sir E. Grey may have to make, a copy of a despatch† from the Governor of Sierra Leone on the subject.

2. Copies of Mr. Chamberlain's two despatches‡ to which reference is made are enclosed for convenience of reference, together with a copy of a report§ from the Law Officers of the Crown, drawn up in 1899, which deals with the question of the liability of the Government in respect of similar claims.

I am, &c.,

G. V. FIDDES

\* No. 142.

† No. 169.

‡ 14591 and 18311/98: not printed.

§ No. 225 in Vol. V. of Law Officers' Opinions.



20348

No. 176.

## FOREIGN OFFICE to COLONIAL OFFICE.

(Received 21 June, 1911.)

SIR,

Foreign Office, 20th June, 1911.

WITH reference to my letter of the 15th instant,\* I am directed by Secretary Sir E. Grey to transmit copies and paraphrases of telegraphic correspondence with His Majesty's Representative at Washington in regard to the first schedule and the terms of submission to be attached to the Pecuniary Claims Convention with the United States.

It will be recalled that terms of the telegram to Mr. Bryce, No. 167, were privately approved by your Department on the 17th instant.

In his reply to that telegram, Mr. Bryce states that he has telegraphed the terms of submission as now approved by His Majesty's Government to Canada and Newfoundland, requesting a prompt reply, but suggests that in case of delay on the part of the Ministers in Newfoundland Sir E. Morris should be asked to approve the terms here.

Sir E. Grey would be glad if Mr. Bryce's suggestion could be carried out, and if at the same time Sir W. Laurier could also be asked to approve the terms a copy of which is enclosed.

I am, &amp;c.,

LOUIS MALLET.

Enclosure 1 in No. 176.

Mr. BRYCE to Sir EDWARD GREY.

(Received June 15, 11 p.m.)

(No. 90.)

Washington, June 15, 1911. Your telegram No. 164.

Excluded South African claims inadvertently overlooked in my telegram, No. 85. They are, of course, omitted.

No favourable opportunity has occurred for getting in Hanserd and Clarkin claims, but there should be no difficulty in their inclusion in Schedule 2.

Full list will be sent to you by bag on Tuesday with copies of notes exchanged, as I understand that I may now proceed. I am so informing Canada.

Enclosure 2 in No. 176.

PARAPHRASE of TELEGRAM to Mr. BRYCE, Washington. Foreign Office, June 17th, 1911.

(No. 167.)

Pecuniary Claims. Your telegram, No. 90, of June 15th.

As soon as Canada and Newfoundland formally accept terms of submission in the form approved by His Majesty's Government you may exchange notes.

They will, I presume, merely record the understanding that the headings to the categories are not intended to limit the jurisdiction of the tribunal (see my despatch, No. 214, of the 12th ultimo), the acceptance of the terms of submission as agreed upon, and the first schedule in its final form.

Will you please telegraph to Canada and Newfoundland the text of the terms of submission as finally agreed to with the United States Government, saying that His Majesty's Government are prepared to accept them in their present form and ask the two Colonial Governments to communicate with the Colonial Office as well as with you direct?

Enclosure 3 in No. 176.

PARAPHRASE of TELEGRAM from Mr. BRYCE, Washington.

(Received June 19th, 1911.)

(No. 92.)

In accordance with your telegram, No. 167, of the 17th instant, I have telegraphed the terms of submission as approved by you to Canada and Newfoundland.

\* No. 172.

I have requested an immediate answer, as it is very important that the notes should, if possible, be exchanged to-morrow, June 19th. As the Prime Minister of Newfoundland is in London, could he be asked to approve the terms in case Ministers in Newfoundland cause delay? The contents of note will be as contemplated in your telegram mentioned above.

Enclosure 4 in No. 176.

## TERMS OF SUBMISSION.

I. In case of any claim being put forward by one party, which is alleged by the other party to be barred by treaty, the Arbitral Tribunal shall first deal with and decide the question whether the claim is so barred, and, in the event of a decision that the claim is so barred, the claim shall be disallowed.

II. The Arbitral Tribunal shall take into account as one of the equities of the claim, to such extent as it shall consider just in allowing or disallowing a claim, any admission of liability by the Government against whom a claim is put forward.

III. The Tribunal shall take into account as one of the equities of a claim, to such extent as it shall consider just in allowing or disallowing a claim in whole or in part, any failure on the part of the claimant to obtain satisfaction through legal remedies which are open to him or placed at his disposal, but no claim shall be disallowed or rejected by application of the general principle of international law that legal remedies must be exhausted as a condition precedent to validity of claim.

IV. The Arbitral Tribunal, if it considers equitable, may include in its award in respect of any claim interest at a rate not exceeding four per cent. per annum for the whole or any part of the period between the date when the claim was first brought to the notice of the other party and that of the confirmation of the schedule in which it is included.

20411

No. 177.

## NEWFOUNDLAND.

THE GOVERNOR to THE SECRETARY OF STATE.

(Received 8.10 p.m., 20th June, 1911.)

TELEGRAM.

[Copy to Foreign Office, June 26, 1911. L.F.]

(Paraphrase.)

Confidential. Suggestion of British Ambassador at Washington relative to terms of submission accepted by my Ministers.—WILLIAMS.

20871

No. 178.

## STRAITS SETTLEMENTS.

THE ACTING GOVERNOR to THE SECRETARY OF STATE.

(Received June 26, 1911.)

(Confidential.)

SIR,

Government House, Singapore, 29th May, 1911.

WITH reference to your telegram of the 10th May,\* and previous correspondence, on the subject of the claim of the late Mr. A. G. Studer against the Sultan of Johore, I have the honour to transmit a copy of a letter which I addressed to the Sultan and a copy of His Highness's reply.

I have, &amp;c.,

E. L. BROCKMAN.

(S. of S. 68/11.)

Enclosure 1 in No. 178.

SIR,

15th May, 1911.

I HAVE the honour to inform Your Highness that a Pecuniary Claims Convention is now being negotiated by His Majesty's Government with the Government of the United States of America, and His Majesty's Government have found it

\* No. 148.



necessary to agree to the inclusion of the claim of the late Mr. A. G. Studer against the Sultan of Johore in the list of claims on which arbitration is to take place.

2. It is not the intention of His Majesty's Government that Your Highness should incur any liability in connection with this claim, and in the event of an adverse award His Majesty's Government will pay the compensation awarded. It was necessary to settle the terms of the Convention without delay, and His Majesty's Government therefore agreed to include the claim of the late Mr. Studer without consulting Your Highness, being confident that, with Your Highness's well-known loyalty to Great Britain, you would have been ready to accept their view as to the necessity for including the claim, and would acquit them of any intention of discourtesy.

I have, &c.,

His Highness the  
Sultan of Johore, K.C.M.G.,  
Johore Bharu.

E. L. BROCKMAN.

Enclosure 2 in No. 178.

SIR, Istana Besar, Johore Bharu, 24th May, 1911.

I HAVE the honour to acknowledge the receipt of Your Excellency's letter of the 15th May, 1911, numbered S. of S. 68/11, in which Your Excellency informs me that His Majesty's Government have agreed to the inclusion of the claim of the late Mr. A. G. Studer against the Sultan of Johore in a Pecuniary Claims Convention now being negotiated by His Majesty's Government with the Government of the United States of America.

2. I should, of course, have been prepared to act in this matter on the advice of His Majesty's Government, but I note with pleasure that in the circumstances of this case, His Majesty's Government have decided that this Government incur no liability in connection with the proposed arbitration.

I have, &c.,

His Excellency the  
Honourable E. L. Brockman, C.M.G.,  
Officer Administering the Government, Straits Settlements.

IBRAHIM.

21361

No. 179.

FOREIGN OFFICE to COLONIAL OFFICE.

(Received 30 June, 1911.)

SIR, Foreign Office, June 29, 1911.

WITH reference to my letter of the 20th instant,\* I am directed by the Secretary of State for Foreign Affairs to transmit to you copy of a telegram from His Majesty's Representative at Washington, dated the 24th instant, to the effect that he had on that day exchanged notes with the United States Government agreeing to the first schedule and the terms of submission.

I am, &c.,

LOUIS MALLET.

Enclosure in No. 179.

Mr. BRYCE to Sir EDWARD GREY.

(Received June 24, 11.30 p.m.)

(No. 96.)

Washington, June 24, 1911. Claims: Notes exchanged to-day agreeing to first schedule and terms of submission.

C O 886/4/9

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Dominions.

No. 29.

CONFIDENTIAL.

*Proposed Reorganisation of the Colonial Office.*

THE questions before the Committee are—

- (I.) Whether or not the Dominions Department of the Colonial Office should be taken out of the Colonial Office; if so
- (II.) Is the present time ripe for the separation? and
- (III.) If the separation takes place, where should the Dominions Department be placed?

(I.) The Committee know—

(a.) That the late Government in England proposed a permanent standing Commission in connection with the periodical Conference, with a separate office and secretariat, outside of and supplementing the Colonial Office.

(b.) That at the last Conference some of the Dominion representatives pressed for a separate secretariat outside the Colonial Office.

(c.) That His Majesty's Government arranged a compromise whereby the secretariat of the Conference was kept within the Colonial Office, but the work of the self-governing Dominions within that Office was brought into a watertight department.

(d.) That this compromise was, by those who had advocated a separate secretariat, considered to be inadequate.

It is submitted that either sooner or later the Dominions Department must be taken out of the Colonial Office for the following reasons:—

(a.) The present position is a half-way compromise, and is regarded as such. Having gone so far, the logical outcome is to go further. Having admitted that the work of the self-governing Dominions and that of the Crown



Colonies should be kept strictly apart, it must probably be only a question of time to put them under separate roofs and separate Ministers.

(b.) It seems almost, if not quite, impossible to separate Conference work entirely from the general work of the Dominions. If, then, the demand for a secretariat of the Conference outside the Colonial Office is revived and pressed, the only practical course, short of refusal to move any further, is to take the Dominions Department as a whole out of the Colonial Office.

(c.) The feeling for equality and the desire for the semblance of equality is very strong in at any rate some of the Dominions. They wish to be treated as equal nations, and to have their equality accentuated by no longer being brigaded with the Crown Colonies, and by no longer dealing with a departmental Minister.

(d.) The case of the Crown Colonies deserves consideration. They are rapidly growing in importance, and should gain by no longer being overshadowed by the self-governing Dominions.

The arguments on the other side are—

(a.) That there is no real demand for the separation on this side, and that it is more than doubtful whether some of the Dominions wish for it.

(b.) That the change will cause inconvenience, and, possibly, some expense, and duplication of work.

(c.) That the division cannot be logically carried out, for the Pacific and South African Crown Colonies and Protectorates must go with the self-governing Dominions.

(d.) That both self-governing and Crown Colonies and the interdependence of the Empire as a whole will lose by breaking up the Colonial Office, which carries with it time-honoured traditions; that unless the Dominions are given exactly what they like in its place they will resent the change; and that the effect of it must be to estrange the parts of the Empire from each other.

Without enlarging on these different arguments for and against the change, it is submitted that the arguments for it outweigh the arguments against it, mainly on the following grounds:—

(a.) The future lies in recognising the growing equality of the self-governing Dominions with

the mother country and eliminating the semblance of subordination. The proposed change would be a step in this direction.

(b.) The extreme difficulty for the future caused by difference of colour and race within the Empire will not be increased, but probably diminished, by giving the prominence and individuality of a separate office to the Crown Colonies. They will gain, as India gains, by having a separate organisation and being spoken for separately. Three offices, India Office, Crown Colonies Office, and Office of the Self-governing Dominions, will represent—and it is good to represent—the actual facts of the case within the Empire.

(II.) Assuming, then, that sooner or later the Dominions Department should be moved out of the Colonial Office, should it be sooner or should it be later?

The Committee will bear in mind that the self-governing Dominions are now nearing their final form, and four High Commissioners represent in England Canada, Australia, South Africa, and New Zealand.

The Dominion not yet satisfactorily disposed of is Newfoundland.

It is submitted—

(a.) That the proposed change would, at least, not be premature, and, therefore,

(b.) That it would be wise and statesmanlike for His Majesty's Government to be prepared to make it by at once deciding on a scheme, but

(c.) That the exact date for carrying out the scheme should depend on the feeling for or against it shown at the next Conference, and

(d.) That in connection with any such scheme the position of the High Commissioners should be more clearly defined.

It is expedient that His Majesty's Government should take the initiative in the matter, that they should decide what they will do if the Dominions desire a change, and should not leave to the Dominions to dictate the nature of the change. But as to the time when the change should be brought into effect, the wishes of the Dominions may well be consulted.

(III.) If the separation takes place under anything like existing conditions, where should the Dominions Department be placed?



The desire of those in the Dominions who advocated a change in the existing order of things was to deal not with a departmental Minister, but with the head of the whole Government. This was their wish, at any rate as regards what may be called Conference questions.

It might be pointed out, on the opposite side, that foreign Governments and nations deal with the British Government through a departmental Minister, the Secretary of State for Foreign Affairs; but presumably the answer would come back that if International Conferences can be imagined of the scope of the Imperial Conferences, the business would be, or ought to be, in the charge of the heads of the Governments for the time being.

It is very difficult to state the case clearly, partly because its advocates have not thought it out clearly; but the following suggestions are made as likely to meet, at any rate in part—

(a.) The desire of the Dominions to deal with the home Government as a whole.

(b.) The practical objection that the Prime Minister in England would not have time for the work which the charge of the Dominions Department would throw upon him.

(1.) Of the different offices of State, the Privy Council Office is, in theory at any rate, one of the least departmental. The Privy Council, as such, has not to do with any one particular branch of the Government.

(2.) The Lord President of the Council holds a specially high position, and at the same time has, it is understood, more time than most Ministers for additional duties.

(3.) The Crown being beyond question the one main bond of union in the Empire, it is appropriate that the self-governing Dominions should be associated with the office of the King's Privy Council.

(4.) The Lord President of the Council being invariably in the House of Lords, and the Prime Minister usually in the House of Commons, the Prime Minister could be, in the ordinary course, the spokesman of the Dominions in the House of Commons.

(5.) Although it is not practicable to have an office for the Conference Secretariat wholly apart from the Dominions Department, yet there are certain large questions which are Conference

questions, and not purely Canadian or Australian questions, &c. The more important of these questions the Lord President might remit to the Prime Minister without overtaxing him.

(6.) The High Commissioners, if fully recognised as spokesmen of their Dominions, should be sworn of the Privy Council and should form the nucleus of a committee of that Council advising in the intervals of the Conferences on matters common to all the Dominions, and forming the Permanent Commission which Mr. Lyttelton originally suggested.

If their meetings were only quarterly or half-yearly, the Prime Minister might be able and willing to take part in them.

It is submitted that a scheme on the above lines, if carefully worked out, would meet the case and give scope for future development.

C. P. L.

July 23, 1910.



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**Dominions**

No. 30.

[Being a Second Edition of *Dominions No. 8.*]

**CONFIDENTIAL.**

Summary showing action taken on the  
Resolutions of the Colonial Conference  
of 1907, and on other Matters affecting  
the self-governing Dominions.

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**I.**

**IMPERIAL CONFERENCE SECRETARIAT.**

The first resolution of the Colonial Conference of 1907 recommended the establishment of a system by which the several Governments represented on that Conference should be kept informed, between the periods of the Conferences, in regard to the matters which had been made the subjects of discussion, by means of a permanent Secretarial Staff, charged under the direction of the Secretary of State for the Colonies with the duty of obtaining information for the use of the Conference, of attending to its resolutions, and of conducting correspondence on matters relating to its affairs.

In accordance with this resolution a re-organisation of the Colonial Office took place, the details of which were communicated by Lord Elgin to the Governors-General and Governors in a despatch\* of the 21st of September, 1907. Under this arrangement a separate branch of the Office was created in respect of the business of the self-governing Colonies, and a permanent Secretariat established in connection with the Imperial Conference. It was also proposed that, in regard to matters of routine connected with the Conference, the Secretariat should correspond direct with Dominion Ministers, either under flying seal

\* Published in [Cd. 3795].



through the Secretary of State to the Governors, or through the High Commissioners or Agents-General.

The Government of the Transvaal expressed great gratification with the proposed alterations, and they laid stress on bringing the High Commissioners and the Agents-General of the Dominions into constant touch with the work of the Conference, on the ground that the permanent Secretariat to the Conference would thus have the advantage of consultation with experts in Dominion affairs who were in the confidence of their Governments, and that the Dominion Governments would thus receive communications from their advisers on the spot, and, without special reference to them and consequent loss of time, have their views on matters referred to them.

The Government of the Cape of Good Hope expressed appreciation at the promptitude with which effect had been given to the changes in the organisation of the Colonial Office and their desire to participate in every way. They suggested that a Conference should be held with the Agents-General, with a view to drawing up proposals for the establishment of their relations with the Secretariat to the Imperial Conference for subsequent consideration by the Governments concerned.

The Government of Natal expressed thanks for the information contained in the Circular Despatch of the 21st of September, and suggested that the Agent-General in London should be brought into close touch with the matters appertaining to the affairs of the Conference.

The Government of the Commonwealth of Australia pointed out that the proposals made did not, in their opinion, carry out the resolution agreed to at the Imperial Conference.

The Government of Newfoundland suggested that the new Secretariat might be used for keeping each Dominion informed of the laws from time to time enacted in any other Dominion, as well as in the United Kingdom. In accordance with this suggestion, the Dominion Governments have been asked to supply copies of the annual legislation of each Parliament to the Library of the other Parliaments in those Dominions, and copies of the Imperial Statutes are sent regularly to each Dominion, special attention being called to statutes of special value or importance.

No reply has yet been received from the Governments of Canada and New Zealand with regard to this question, although these Governments have been reminded that an expression of their views is awaited, while the Government of the Orange River Colony merely acknowledged receipt of the despatch sent. A despatch has been sent to the Governor-General of the Union of South Africa drawing his attention to the South African dispatches above mentioned, and asking whether his Government desire at the next Conference to discuss the question of the position of the High Commissioners and Agents-General in relation to the Colonial Office and the Secretariat to the Conference.

## II.

### IMPERIAL GENERAL STAFF AND SENDING OF DOMINION OFFICERS TO THE STAFF COLLEGE.

The third resolution of the Colonial Conference affirmed the need of developing for the service of the Empire a General Staff, selected from the forces of the Empire as a

whole, which should study military science in all its branches, collect and disseminate to the various Governments military information and intelligence, undertake the preparation of schemes of defence on common principles, and, at the request of the respective Governments, advise as to the training, education and war organisation of the Military forces of the Crown in the various parts of the Empire.

On the 24th of December, 1907, the Governor-General of Canada forwarded a recommendation from his Government for the extension of the employment of selected officers of the Canadian Forces with His Majesty's regular troops. It was pointed out that in 1905 arrangements were approved for the exchange of Canadian officers, who had graduated at the Staff College, and Imperial Staff officers. During the visit of the Minister of Militia and Defence to London, in connection with the Colonial Conference, he had discussed with the Army Council the further possibility of executive commands, as well as Staff appointments, in the British Army being offered by the Army Council to Canadian officers who had acquitted themselves well in active service in the field. The Minister had also arranged with the Army Council for the exchange of executive Officers. The appointments of Chief of the General Staff, Director of Operations and Staff Duties, Commander of the Royal Military College, and Staff Officer of the Maritime Provinces Command were already held by officers of the British Regular Army, so that ample fulfilment had been made of the pledge of reciprocity on the part of the Canadian Forces.

The Army Council, in reply, heartily concurred in the view expressed by the Government of Canada, and stated that the Command of the 5th Infantry Brigade at Aldershot was available to be offered to Colonel Otter, C.B. Colonel Otter, however, was not actually able to accept the appointment, but a similar offer was made in 1910 to, and accepted by, Colonel R. H. Davies, C.B., of the New Zealand Military Forces.

The attention of the Governments of Australia and New Zealand and of the South African Colonies was also called to the desirability of sending qualified officers each year to the Staff College in England, as a preliminary towards the formation of an Imperial General Staff.

The Commonwealth of Australia sent to England Major-General Hoad, in order to discuss with the War Office and with the Imperial Defence Committee various matters of importance, and in particular the question of the representation of Australia on a General Staff. Similarly at the instance of the Canadian Government Sir F. Borden discussed with the War Office the same questions as affecting Canada.

The War Office prepared a memorandum stating the principles on which the organisation of the General Staff and the preparation of a uniform defence scheme for the Empire should be based, and this memorandum was communicated to the Dominions and was laid before Parliament [Cd. 4475]. The question was also brought before the Naval and Military Conference of 1909 [see Cd. 4948]. The principles suggested by the War Office have been accepted by the Government of the Dominion of Canada, and by the Government of the Commonwealth of Australia, and appointments have been made of officers to the local and the general staffs, while arrangements have been made for direct communication between the



local and Imperial General Staffs. The War Office has also submitted detailed proposals as to loans and interchanges of officers for the consideration of the Dominion Governments.

### III.

#### JUDICIAL APPEALS.

The fifth resolution arrived at by the Colonial Conference on the subject of Judicial Appeals was to the effect

(1) That it is expedient that the practice and procedure of the Judicial Committee of the Privy Council should be definitely laid down in the form of a code of rules and regulations.

(2) That in the codification of the rules regard should be had to the necessity for the removal of anachronisms and anomalies, the possibility of the curtailment of expense and the desirability of the establishment of courses of procedure which would minimise delays.

(3) That with a view to the extension of uniform rights of appeal to all Colonial subjects of His Majesty, the various Orders in Council, Instructions to Governors, Charters of Justice, Ordinances, and Proclamations upon the subject of the appellate jurisdiction of the Sovereign should be taken into consideration for the purpose of determining the desirability of equalising the conditions which give right of appeal to His Majesty.

(4) That much uncertainty, expense, and delay would be avoided if some portion of His Majesty's prerogative to grant special leave to appeal in cases where there exists no right of appeal were exercised under definite rules and restrictions by the Colonial Courts.

In accordance with this resolution a revised draft of rules regarding appeals was drawn up by the Judicial Committee of the Privy Council, and was forwarded to the Dominion Governments in despatches of the 20th of August, 1908, for their consideration. The rules represent a codification of the rules which at present are in force, with simplifications on all possible points. The most important alteration is that it is suggested that every Supreme Court should be entitled to grant leave to appeal at its discretion from any judgment, whether final or interlocutory, if in the opinion of the Court the question involved in the appeal is one which, by reason of its grave general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision. This power will rest with the Court entirely, and will in all Possessions except Canada and Australia co-exist with the right of appeal which will, as at present, exist in the case of final judgments of the Court where the matter of dispute on appeal amounts to, or is of the value of, a sum which varies in the several cases from £300 to £2,000—£500 being the most usual amount. This alteration will obviate the necessity which at present exists of obtaining special leave to appeal from the Privy Council, involving as a rule a double resort to the Privy Council with its attendant inevitable delay and expense. The rule will also permit of the granting of leave to appeal by the Court in criminal cases, involving points of law in which it is desired to obtain the decision of the Judicial Committee, whereas at present it is very difficult to obtain a decision of the Judicial Committee on any criminal case, as the Judicial Committee are most unwilling to grant special leave to appeal in such cases, in which the delay of the execution of the sentence of the Court below is usually most undesirable.

To save expense and delay it is also provided that a Colonial Court may permit an appellant, to whom final leave to appeal has been granted, to withdraw his appeal prior to the despatch of the record to England, a power which at present Colonial Courts do not appear to have, and that if an appellant, having obtained final leave to appeal, fails to show due diligence in taking the necessary steps for the purpose of procuring the despatch of the record to England, the respondent may, after giving the appellant due notice of his intended application apply to the Court for a certificate that the appeal has not been effectually prosecuted by the appellant, and if the Court sees fit to grant such a certificate, the appeal shall be deemed as from the date of such certificate to stand dismissed for non-prosecution without express order of His Majesty in Council. Several of the Colonial Governments had pointed out that the matter dealt with by the latter rule was the cause of much of the delay in prosecuting appeals. Provision is also made that where at any time between the Order granting final leave to appeal and the despatch of the record to England, the record becomes defective by reason of the death or change of status of a party to the appeal, the Court may, notwithstanding the Order granting final leave to appeal, on an application made by any person interested, grant a certificate showing who is the proper person to be substituted in place of, or in addition to, the party who has died, or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted, without express order of His Majesty in Council, thus obviating the expense and the delay of procuring a formal Order in Council.

Generally the rules are based on the assumption that the Court appealed from is the best qualified to deal with any questions that may arise in connection with the appeal up to the despatch of the record to England, and they seek accordingly to invest the Court with all necessary powers for that purpose, especially in the cases when some time elapses between the final Order granting leave to appeal and the despatch of the record, when, in some cases, it has been held the Court has no power to take any steps that may be necessary to meet the altered circumstances.

In sending the draft rules to the Dominion Governments it was pointed out that the rules, after adaptation to local circumstances, could either be enacted by the Dominion Parliaments, or might be issued in the form of an Order in Council. It was suggested that the latter form of procedure would probably be the more convenient, as permitting alterations to be made in the rules at the request of the Dominion Governments without the delay and trouble of procuring an amending Act of the local Parliament, but it was suggested that, whatever mode of procedure were adopted, a draft of the proposed legislation should be forwarded to the Judicial Committee of the Privy Council, for any observations they might desire to offer on the subject.

Orders in Council on the lines of the new rules have been issued in respect of the Dominions of New Zealand, Newfoundland, the provinces of Alberta, Saskatchewan, Prince Edward Island, Manitoba, and New Brunswick, in Canada, Queensland, South Australia, New South Wales, and Western Australia. An Order in Council was also issued in respect of the Transvaal before the Union of South Africa was constituted.

An Order in Council has also been issued approving



new rules for procedure in England on appeals from the Dominions. These rules, which have been communicated to the Courts of the Dominions, simplify the procedure in this country with a view to diminishing the cost of appeals.

An Act, 8 Ed. VII. c. 51, to amend the law with respect to the Judicial Committee, passed in 1908, among other provisions, carried out a suggestion made at the Conference, that upon the hearing of an appeal from the Supreme Court of any self-governing Dominion, it should be possible for a Judge of the Court from which the appeal is being brought, to attend as an Assessor of the Judicial Committee. This Act added the High Court of Australia and the Supreme Courts of Newfoundland, the Transvaal, and the Orange River Colony to the Schedule of the Judicial Committee Amending Act of 1905, and also made provision for the resignation of any member of the Judicial Committee.

#### IV.

##### AUSTRALIAN PREFERENCE.

At the close of the Colonial Conference Mr. Deakin requested that the Australian Customs Tariff (British Preference) Bill of 1906 might remain reserved, as he proposed during the next session of the Commonwealth Parliament to obtain the assent of Parliament to a proposal which would render the submission of that Bill for the Royal Assent unnecessary. The Bill has accordingly not been assented to, but under the Commonwealth Tariff Act enacted by the Parliament in 1908, preferences of varying, but in many cases of substantial, extent, are given upon British goods without any reservation as to the mode of importation.

#### V.

##### APPOINTMENT OF TRADE COMMISSIONERS IN THE DOMINIONS AND SUPPLY OF INFORMATION RESPECTING DOMINION LEGISLATION AFFECTING TRADE INTERESTS.

During the discussion of the Colonial Conference, it was pointed out by the Prime Minister of New Zealand that certain disadvantages accrued to British manufacturers owing to the lack of any commercial representatives in the Colonies. The main duty of the Consular representatives of foreign countries is to supply information for the use of foreign manufacturers, while the absence of consular representatives in the Colonies deprives British manufacturers of the assistance which their rivals have, and which they themselves obtain in foreign countries from British Consular representatives.

In view of the opinion expressed at the Conference, the Board of Trade proposed that in addition to local commercial correspondents in each of the principal industrial centres in the Colonies, commercial agents of standing and remuneration similar to those of Consuls-General should be appointed in each of the principal self-governing Colonies.

Similar suggestions were made by the Governments of Canada, of the Cape of Good Hope, and of the Commonwealth of Australia independently, and His Majesty's Government accordingly decided to make the proposed appointments with the concurrence of the Dominion Governments. Appointments have, therefore, been made of Trade Commissioners in Canada, in the Commonwealth

of Australia, in New Zealand, and in South Africa, while in the case of Newfoundland an officer of the Colonial Government has been appointed as paid correspondent for that Colony. The duties of these officers will be to keep themselves in close touch with all the commercial developments of all the Dominions in question, to supply to the Board of Trade and to manufacturers in England information on all commercial questions, to supervise the work of the local commercial correspondents of the Board of Trade, and generally to afford the same sort of assistance to British manufacturers as is now given by the British Consuls in foreign countries. All the Dominion Governments have readily undertaken to co-operate with the Trade Commissioners, and to afford them such information as it may be possible to give them as to commercial legislation contemplated by the Governments, and from the reports received from these Commissioners it is clear that much useful work is being done by them in encouraging closer commercial relations between the Dominions and the United Kingdom.

#### VI.

##### COAST-WISE TRADE IN THE COLONIES AND TRADE BETWEEN THE UNITED STATES AND ITS DEPENDENCIES.

The tenth resolution of the Colonial Conference reaffirmed a resolution of 1902, calling the attention of the Governments of the Colonies and of the United Kingdom to the advisability of refusing the privileges of coast-wise trade to countries in which the corresponding trade is confined to vessels of their own nationality.

In accordance with the spirit of this resolution, the Government of Canada by an Order in Council of the 13th of January, 1908, has withdrawn from the vessels of Italy, Germany, the Netherlands, Norway and Sweden, Austria-Hungary, Denmark, Belgium, and the Argentine Republic, with effect from 1st January, 1909, the privilege of sharing in the coasting trade in the Dominion which these countries have hitherto enjoyed, thus reserving entirely to British ships the coast-wise trade of Canada.

It has, however, since been found necessary to pass an Act, giving the Governor-General in Council power to admit any defined classes of vessels to the coasting trade of Canada, on the ground, it is understood, that it may not be possible forthwith to replace the particular type of foreign (especially Norwegian) vessel now engaged in the coast-wise trade of Eastern Canada by British ships, and an Order-in-Council has been issued under the Act permitting within definite limits the engagement of certain classes of foreign vessels in the coasting trade up to 1911.

By the Navigation Bill now before the Parliament of the Commonwealth, all foreign vessels engaged in the coasting trade will be required to submit to the same conditions as those enforced upon British and Australian vessels, and the Governor-General in Council will be empowered to exclude altogether from the coasting trade, the vessels of those countries which do not admit British ships to the coasting trade.

It may be noted, however, that the United States Legislature has passed an Act, repealing the prohibition on foreign vessels from engaging in trade between the Philippine Islands and the United States, to which attention was called at the Colonial Conference of 1907.



## VII.

## TREATY OBLIGATIONS.

The eleventh resolution arrived at by the Colonial Conference on the subject of Treaty obligations was that the Imperial Government be requested to prepare, for the information of the Colonial Governments, statements showing privileges conferred and the obligations imposed on the Colonies by existing Commercial Treaties, and that enquiries be instituted to ascertain how far it is possible to make these obligations and benefits uniform throughout the Empire. The desire of the Colonial Governments for further information as to the provisions of Treaties has been provided for in part by the publication of Blue Books containing the terms of Commercial Treaties with most-favoured-nation clauses, and by the publication of a special volume of Commercial Treaties which has been transmitted to the several Dominions, and which has also been published in this country.

The question of introducing uniformity into the stipulations contained in Commercial Treaties has also received consideration. After consultation with the Board of Trade a model draft Treaty of Commerce and Navigation was forwarded to the Governors-General and Governors of the Dominions on the 1st of August, 1907. On the whole the replies from the Dominion Governments were in favour of the adoption of the proposed form of Treaty.

The Government of the Dominion of Canada expressed satisfaction with the Treaty, but pointed out that several points would require further consideration in actual negotiations. The Government of Newfoundland considered that it might be desirable to divide the Treaty into the Heads "Commercial" and "Navigation," but concurred generally in the terms of the Treaty. At the same time they suggested that when negotiations were projected with any particular country with a view to arranging a Treaty of Commerce and Navigation each Colony should be notified and invited to express any views relating to the trade of that Colony with the country in question.

The Government of the Commonwealth of Australia suggested that it might be possible to obtain the right of separate adherence to each article of the model Treaty, but it was recognised that such a request could not be made as of right. The Government of New Zealand stated that they had no suggestions to offer with regard to the draft Treaty of Commerce, but later suggested that the proposal of the Government of the Commonwealth of Australia should be adopted.

The Government of the Cape of Good Hope stated that they considered that the draft articles submitted appeared to be as satisfactory as could well be devised for dealing with a complicated subject on general lines, and that the provisions of Articles 20 and 21, permitting separate adherence and withdrawal of a Dominion, would meet the requirements of the Cape. The Government of Natal reported that they were generally in favour of the terms of the draft Treaty, but offered criticisms on certain Articles. The Government of the Transvaal were of opinion that there were serious difficulties in the way of accepting as applicable to the Transvaal the provisions of the draft Treaty of Commerce and Navigation, as Articles 1 to 3 conflicted with the existing legislation in the Transvaal affecting coloured persons and Asiatics, Article 5 conflicted with the special agreement regarding freedom

from all duty of the produce and manufactures of the Province of Mozambique, while Articles 10 to 17 referred to matters of navigation. But they consider that Articles 20 and 21 removed any difficulties from the position by leaving it open to the Transvaal Government to adhere or not to Treaties.

The Government of the Orange River Colony considered that it would not be possible, for reasons similar to those given by the Government of the Transvaal, for the Orange River Colony to adhere to a Treaty on the basis of the model draft, but that paragraphs 20 and 21 would appear sufficient to safeguard the position of the Colony.

After full consideration of the replies from the Dominion Governments, His Majesty's Government, in a despatch of the 22nd of May, 1908, decided that it was not possible to revise the terms of the draft Treaty so as to obviate all possible objections, but that clauses 20 and 21 of the draft adequately safeguarded the interests of the Dominions. The suggestion of the Government of the Commonwealth was considered not to be practicable. At the same time, His Majesty's Government intimated that when negotiations were projected with any particular country, the Government of each Dominion should, where time and circumstance permitted, be notified of the fact, and be invited to express any views which it might desire to offer relating to the trade of that Dominion with the country concerned, and this rule has been followed in the case of the commercial negotiations with Guatemala, Salvador, Japan, France, etc.

In reply to Lord Crewe's despatch of 22nd May, the Commonwealth Government replied that they had no objection to the draft Treaty on the understanding that the Commonwealth could not be a party to any Treaty which would hamper its action in dealing with such subjects as the differential treatment of British or Australian shipping, reciprocity with other countries, and restrictions on immigration.

There has also been extended the practice of the negotiation of separate treaties for the Dominions, and the commercial conventions with France have been negotiated by Canadian Ministers, who have signed jointly with the Ambassador at Paris. So also an important series of treaties regarding the international boundary, the fisheries, etc., has been concluded with the United States of America in the interests of Canada, the Government of the Dominion being fully consulted with regard to the terms of the conventions, although they were signed only by the Ambassador at Washington. Formal recognition of the constitutional practice of consulting the Governments of the Dominions in cases in which they are interested has been secured in the Anglo-United States Arbitration Convention of 1908 under which His Majesty's Government secure in effect the right to obtain the concurrence of a self-governing Dominion in the reference to arbitration of any matter affecting that Dominion.

## VIII.

## WITHDRAWAL OF THE DOMINIONS FROM VARIOUS TREATIES.

In accordance with the eleventh resolution of the Colonial Conference, steps have also been taken as far as possible to revise the existing Commercial Treaties with



foreign Powers, so as to secure to the Dominion Governments the power of separate withdrawal from Treaties which might fetter the freedom of action. This concession has been obtained from the Government of Paraguay in respect of the Commercial Treaty of 1884; from the Government of Egypt in respect of the Commercial Convention of 1889; and from the Government of Liberia in respect of the Treaty of 1848. A similar proposal was made to the Government of Salvador in respect of the Treaty of 1862, but that Government thereupon gave notice of the termination of that Treaty, and a fresh Treaty is being negotiated, which, like all recent Treaties, will include the right of separate adherence and withdrawal. The Government of Honduras has similarly denounced the treaty of 1887. Negotiations have also been conducted with the other Powers with which His Majesty's Government have Commercial Treaties, and which do not contain clauses of separate withdrawal by the Dominion Governments, but so far with little result, as Italy and Austria-Hungary, in reply to representations with regard to the treaties in force respecting commerce and shipping, have shewn reluctance to consent to allowing the separate withdrawal of the Dominions. Notice has however been given to the Governments of Greece and Paraguay of the withdrawal of Australia from the treaties of 1886 and 1884, so far as they were binding on the Commonwealth.

## IX.

## UNIFORMITY OF TRADE MARKS AND PATENTS.

The thirteenth resolution of the Colonial Conference declared that "it is desirable that His Majesty's Government after full consultation with the self-governing Dominions should endeavour to provide for such uniformity as may be practicable in the granting and protection of Trade Marks and Patents."

In accordance with this resolution the Patent Memorandum presented to the Colonial Conference (Printed at pages 507 to 520 of [Cd. 3524]) has been brought up to date, and a similar Memorandum as to Trade Marks has been prepared. Both these Memoranda were forwarded to the Dominion Governments, with a suggestion that those Governments should consider how far it is possible to assimilate the Dominions legislation to that in force in the United Kingdom, special attention being drawn in each case to the differences at present existing between the two sets of laws.

In reply the Governments of the four South African Colonies thought that the matter must stand over until Union. The Government of Newfoundland thought that the question should be discussed at the next Imperial Conference, but the Government of Canada was of opinion that no useful purpose would be served by a conference, and that it would not be worth while in order to assimilate the laws of the Dominion and the United Kingdom to incur the confusion and trouble to the people of the Dominion consequent on such action. The Government of New Zealand were prepared to amend the law as to trade marks so as to correspond generally with Imperial legislation (save as to cotton marks and standardisation marks, for which no special provision was deemed necessary in view of the special circumstances of New Zealand) and to consider the amendment of the law as to Patents, but they considered that it was not necessary to discuss the

question at a conference. The Commonwealth of Australia reported that by an Act, No. 17 of 1909, the Patent law had been modified and assimilated to that of the United Kingdom as regards Patents of Addition, restoration of lapsed Patents in the case when a patent is not worked adequately, compulsory licences, surrender of patents, and improper conditions imposed by patentees.

The Commonwealth Government added that, in view of the action already taken and the replies of the other self-governing Dominions, they considered that no advantage would be gained from a conference.

## X.

## UNIFORMITY IN TRADE STATISTICS.

The fourteenth resolution of the Colonial Conference declared that "it is desirable, so far as circumstances permit, to secure greater uniformity in the Trade Statistics of the Empire, and that the note prepared on this subject by the Imperial Government be commended to the consideration of the various Governments represented at the Conference."

This Resolution, and the note referred to, were brought to the notice of the Governors-General and Governors, in a despatch of the 30th of July, 1907. The replies received up to 14th December were forwarded to the Dominion Governments in a despatch of that date.

The Government of Canada, in a reply received after the despatch of that circular, pointed out that it would not be possible on grounds of convenience to adopt the calendar year as a basis of compilation; that save in the case of imports enjoying the preferential tariff accurate information as to country of origin could not be obtained, nor could such information be obtained as to exports; that the classification of articles was already very detailed; and that it was not practicable to arrange articles in main groups distinguishing trade with the United Kingdom, British Possessions, and foreign countries. They undertook, however, in compliance with a request from the Board of Trade, to obtain in 1909 declarations of country of origin from importers and to publish import statistics on that basis, and also to include in the annual returns of statistics a summary of imports and exports under the heads of "Foods," "Raw Materials," and "Manufactured Articles," distinguishing in each category the trade with the United Kingdom, British Possessions, and foreign countries.

The Government of Newfoundland pointed out that, in order to bring their statistics into uniformity with those of the United Kingdom, it would be necessary to alter the arrangements now in force including the financial year, and the mode of entering goods, which could not take place until a new Revenue Act was passed, and that in the meantime the statistical staff was too small to admit of a second compilation on a different form from the earlier returns.

The Government of the Commonwealth of Australia replied that quantities and values of goods imported would in future publications of the trade reports of the Commonwealth be shown against the particular countries of origin in all cases where quantity is now recorded, the values only having hitherto been shown in relation to the country of origin. The question of extending the record



of quantity to a larger number of items was also to receive consideration; the list is already exhaustive but does not distinguish linen and cotton "piece-goods."

In South Africa the question has been discussed by the Principal of the South African Customs Statistical Bureau on behalf of the Colonial Governments with the Board of Trade and certain suggestions have been made to the South African Governments for the improvement of the method of collecting information.

The Government of New Zealand were ready to carry out the suggestions of the Board of Trade as to a return of articles in summary groups to show trade with the United Kingdom, British Possessions, and foreign countries, if Canada and Australia also agreed to do so. To give the country of origin save in the case of goods liable to surtax would be merely to give inexact and unreliable information.

## XI.

### UNIFORMITY IN COMPANY LAW.

The fifteenth resolution arrived at by the Colonial Conference on the subject of uniformity in Company law declared that "it is desirable, so far as circumstances permit, to secure greater uniformity in the Company laws of the Empire, and that the memorandum and analysis prepared on this subject by the Imperial Government be recommended to the consideration of the various Governments represented at this Conference."

This resolution was brought to the notice of the Governments of the Dominions in a despatch of the 31st of July, 1907. The resolution was also communicated to the Australian States, as the Commonwealth Government has not hitherto exercised its power of legislation with regard to trading companies.

The Governments of the Australian States replied that they did not propose to take any action under the resolution, as they understood that the Commonwealth Government intended to legislate on the subject, while the Commonwealth Government replied that a Bill was being drafted by their Law Advisers, and would be introduced into Parliament in the session of 1908-9, but no legislation has yet taken place. The Governments of the South African Colonies replied that they were in sympathy with obtaining uniformity in the Company laws of the Empire, and that the matter had for some time been under their consideration, and they hoped to be able to deal with it in a practical manner at some not very distant date. Subsequently the Transvaal Parliament passed an Act, No. 31, of 1909, based closely on the model of the Imperial Act of 1908.

The Government of New Zealand expressed readiness to consider amendment of its company legislation for the sake of uniformity with Imperial legislation, and its company legislation was consolidated with the rest of New Zealand legislation in 1908.

The Government of the Dominion of Canada reported that the papers laid before the Colonial Conference in 1907 were being transmitted to the Lieutenant-Governors of the several Provinces and the Commissioner of the Yukon Territory, with a request that they might receive consideration at the hands of the Provincial Governments at the very earliest opportunity.

In a despatch of the 22nd of May, 1908, the Secretary of State forwarded to the Governors-General and Governors

copies of the draft Bill to consolidate the company laws of the United Kingdom which was then before the Imperial Parliament, and which it was hoped might serve to indicate the nature of the steps to be taken to secure similarity in Company legislation. The Bill has since become law as Act 8 Ed. vii. c. 69, and copies have been sent to the Governments of the Dominions and States.

A substantial privilege is conceded by this Act (consolidating a short Act passed in the same session) to all companies registered in the Dominions, as the requirements of a licence or mortmain, costing about £70 on each occasion, for the holding of land by such companies is repealed, and as regards the holding of land the companies are placed on the same footing as companies registered in the United Kingdom.

## XII.

### RECIPROCITY IN ADMISSION OF SURVEYORS TO PRACTICE.

The question of the admission of Surveyors to practice was discussed during the Colonial Conference, and a Memorandum was drawn up by the Council of the Surveyors' Institute, which was laid before the Conference, on the subject of the proposal to establish reciprocity between the several parts of the British Empire in matters connected with the examination and authorisation of Surveyors. The sixteenth resolution of the Conference recommended the resolution to the consideration of the Colonial Governments.

On the 8th of April, 1908, a despatch was sent to the Dominion Governments, requesting copies of the syllabus of examination recognised by those Governments for the information of the Surveyors' Institute. These copies have been received and transmitted to the Institute, which submitted a memorandum dealing with the matter for communication to the several Governments. This memorandum was sent out to the various Dominions and to the Australian States, and it was finally agreed to hold a Conference in London to discuss the question. The date suggested for this Conference is May, 1911, when it is hoped that all the Dominions will be represented.

## XIII.

### NATURALISATION.

The nineteenth resolution arrived at by the Colonial Conference on the subject of naturalisation was that, with a view to obtain uniformity as far as practicable, an enquiry should be held to consider further the question of naturalisation, and in particular to consider how far, and under what conditions, naturalisation in one part of His Majesty's Dominions should be effective in other parts of those Dominions, a subsidiary conference to be held if necessary under the terms of the resolution adopted by the Conference on the 20th of April.

In accordance with the resolution an Inter-departmental Committee was appointed by His Majesty's Government to discuss the terms of the draft Naturalisation Bill. This Committee consisted of Sir M. D. Chalmers, K.C.B., C.S.I., representing the Home Office, who acted as chairman; Mr. W. R. D. Maycock, C.M.G., Superintendent of the



Treaty Department of the Foreign Office, representing the Foreign Office; Mr. S. G. Sale, Legal Adviser to the Secretary of State for India in Council, representing the India Office; Mr. H. W. Just, C.B., C.M.G., the Secretary to the Imperial Conference, representing the Colonial Office; and Mr. W. A. Robinson, of the Colonial Office, as Secretary. Various amendments were proposed in the Bill, and a memorandum on the subject of these amendments was drawn up which was sent to the Governments of the Dominions on the 9th November, 1908, with a request that they would request their High Commissioners and Agents-General or other representatives in this country to confer with the Secretary to the Imperial Conference and the nominees of the other offices, with the object of arriving at a general agreement on the subject of naturalisation, which could then be carried into effect by Imperial and Colonial legislation. The Governments of the South African Colonies found themselves unable to discuss the question pending Union. The Government of Newfoundland was disposed to accept the draft Bill. The Government of the Commonwealth concurred in the principles of the Bill subject to certain detailed suggestions. These have been carefully considered by the Committee and in substance adopted, and the Dominion Governments have been informed of the modifications thus made in the proposals of the Imperial Government.

#### XIV.

##### NAVAL DEFENCES—AUSTRALIA AND NEW ZEALAND.

During the Colonial Conference, Mr. Deakin discussed with Lord Tweedmouth and the heads of the Admiralty the question of Australian Naval Defence. On the 16th of October, 1907, he addressed to the Governor-General a despatch explaining the views of the Commonwealth Government in this matter. In that despatch the suggestion was pressed that instead of a contribution of money, the share of the duty of the Naval Defence undertaken by Australia should take the form of a contribution of Australian seamen.

The proposal then made by Mr. Deakin was to substitute for the present Commonwealth subsidy 1,000 seamen—Australians if possible—to be paid by the Commonwealth, for service in the Navy on the station, at an estimated cost of about £100,000 per annum to the Commonwealth, the remainder of the subsidy to be applied by the Commonwealth to obtaining submarines or destroyers, or similar local defences.

At the same time, two cruisers of P. or a superior class, manned by 400 of the 1,000 Australians, should be retained on the coast in peace or war.

In addition, the Commonwealth would provide in 1907 £250,000 for harbour and coast defences, and £50,000 for the fortification of harbours.

The Admiralty, in reply, pointed out that at the Colonial Conference, no proposal had been made for the permanent retention of cruisers in Australian waters, and that while anxious to meet the wishes of Mr. Deakin, they were not prepared to depart from the decision taken up at the Conference, that while they did not themselves propose to cancel the agreement with Australia and New Zealand, yet if the Commonwealth Government desired to cancel the agreement and to substitute other arrangements, they

were willing to advise and assist in carrying out a scheme for local defences, always provided that such a scheme did not involve a definite obligation to maintain British vessels permanently in Australian waters. They also regarded it as essential that complete control by the Commander-in-Chief over the local forces in time of war must be secured to the Imperial Government.

After further correspondence, Mr. Deakin requested that the Admiralty should draw up a scheme to provide for the utilisation of Australian seamen in local defences and for connection of the Australian Flotilla with His Majesty's Fleets of War. This scheme was forwarded to Australia in August, 1908. It was based on the principle that the Commonwealth Government should provide and maintain nine submarines and six destroyers in Australian waters; that this flotilla should be manned by officers and men of the Royal Navy, as many as possible of whom should be men recruited for the Royal Navy in Australia; that the officers and men should serve under the King's Regulations for the Navy, but that the direction of the fleet should be entrusted to the Minister of Marine of the Commonwealth, who should control the fleet so long as it remained in Australian waters or while passing from one point to another point of Australian territory, including Papua. If passing beyond Australian waters, the fleet should fall under the control of the Senior Naval Officer, but by arrangement with the Commander-in-Chief it would be possible to despatch the fleet on training cruises. The estimated total annual cost was just under £350,000 while the capital cost was estimated at £1,277,000. It would be understood that in time of war, the fleet would be placed by the Commonwealth Government under the control of the Commander-in-Chief. Full details of the scheme are given in the Parliamentary Paper [Cd. 4325].

The Government of New Zealand in 1908 decided to increase the subsidy to the Squadron on the present basis to £100,000 a year from the 1st of October, 1908, and this proposal was approved by the Dominion Parliament. Recognising how important it is for the protection of the Empire that the Navy should be at the absolute disposal of the Admiralty, the Dominion Government did not desire to suggest any conditions as to the location of the ships, as they were confident that the truest interests of the people of New Zealand would be best served by having a powerful navy under the constant control of the Admiralty.

In 1909 the question of naval defence was raised in an acute form by the debates in the Imperial Parliament regarding the naval estimates. As a result an offer was at once made, on 22nd March, 1909, by the New Zealand Government of one, or, if need be, two battle-ships. In consequence of this offer a Conference was suggested by the Imperial Government on 30th April, and was held in July and August. The result of its deliberations is given in [Cd. 4948]. Since that date legislation to carry into effect the results of the Conference has been passed in Australia (No. 15 of 1909, printed at page 29 of [Cd. 5135]) and in Canada (Chap. 43 of 1910).

Questions of military defence have been dealt with both in Australia and New Zealand by Acts requiring compulsory training in the case of boys and young men.

By the advice of Lord Kitchener these Acts are being amended so as to permit of compulsion being applied to young men up to the age of 25-26.



## XV.

## NAVAL AND MILITARY DEFENCES—CAPE AND NATAL.

During the presence of the Cape Ministers in this country at the Colonial Conference, the Admiralty discussed with them the draft of the Bill for the establishment of the Cape Naval Volunteers as a division of the Royal Naval Volunteers Reserve.

A Bill was accordingly introduced into the Cape Parliament, but owing to the dissolution of the Parliament, it was found impossible to get the Bill through in 1907. Nevertheless the Admiralty placed at the disposal of the Naval Volunteers at the Cape at Simonstown the vessel "Odin" for the purpose of their training.

In 1908 the new Government stated that they were prepared to re-introduce the Naval Volunteers Bill, provided the Admiralty did not object to the cost of the maintenance of the force, in addition to the cost of the up-keep of the vessel, being defrayed from the £50,000 paid as a naval contribution. The Admiralty concurred in this arrangement in view of the existing depression in the finances of the Colony. Under this arrangement, while the Admiralty do not undertake direct responsibility for the administration of the Naval Volunteers as a Colonial division of the Royal Naval Volunteer Reserve, they are prepared to co-operate by affording such assistance in regard to training, outfit, inspection and general supervision as the circumstances of the Navy permit. Accordingly, an Act, No. 14 of 1908, has been passed by the Cape Parliament which provides for the establishment in the Cape of a Branch of the Royal Naval Volunteer Reserve established under the Imperial Act of 1903. While on active service or on the books of His Majesty's vessels for training, the Volunteers fall under the Imperial rules for naval discipline. They are also liable to serve as Volunteers on land under the Cape Colonial Forces Act, 1892. The question of the arrangements as to the reorganisation of the forces and the inclusion in it of the Woodstock Naval Cadets has been considered by a Board appointed by the Colonial Government and presided over by the Captain of His Majesty's ship "Hermes," and the recommendations of that Board are under the consideration of the Lords Commissioners of the Admiralty. It is estimated that the annual cost will be about £4,300, which will be deducted from the annual subsidy of £50,000 now paid to naval funds.

A similar arrangement has been made with the Government of Natal, and the Parliament of that Colony passed an Act in 1907 to permit of the enrolment of a force of Naval Volunteers, the cost of which was to be defrayed from the contribution of £35,000 annually to the Imperial Navy, provided for in 1903. At the Naval and Military Conference in 1909, representatives of the South African Colonies attended, but were of course unable to pledge their Governments to any definite course of action in view of the approach of Union.

## XVI.

## PROFITS ON SILVER CURRENCY AND DECIMAL COINAGE.

At the Colonial Conference it was agreed that the Imperial Government should redeem worn gold coin at each of the Australian mints on the same terms as those

on which such coins are redeemed in London. After the conclusion of the Conference, correspondence passed between the Imperial Government and the Government of the Commonwealth, with the result that it has been arranged that His Majesty's Government would gradually redeem all British token coin at its face value, if and when the Australian Government decided to establish its own subsidiary coinage provided that the amount withdrawn in any one year, in addition to worn coin which was withdrawn under existing arrangements, should not exceed the face value of £100,000. The Commonwealth Government was to arrange the method of withdrawal and the silver was to be paid for at its nominal value at the branch mints. With regard to the issue of the new Australian silver coinage, a similar procedure was contemplated as that adopted by the Dominion of Canada. The representative of the Commonwealth Government in London would inform the Royal Mint of the amount of coinage required, and on the requisition of the Royal Mint would purchase the necessary silver bullion. The Royal Mint would then manufacture the coin, at the cost of the Commonwealth Government, which would make arrangements for the conveyance of the coin to Australia. These arrangements have been carried into effect by the Commonwealth Act, No. 6 of 1909.

An Order in Council has also been issued, providing for the exchange of light gold coin at the Sydney and Melbourne branches of the Royal Mint.

## XVII.

## STAMP DUTIES UPON DOMINION SECURITIES.

At the Conference of Premiers and Ministers of the Australian States held at Melbourne in 1908 a resolution was passed to the effect that it was desirable that stamp duties upon the issue of all Colonial Government securities should be abolished by the Imperial and all Colonial Governments. This resolution was brought by the Government of New South Wales to the notice of the Imperial Government, but after the most exhaustive consideration of the question in all its aspects by the Treasury and the Colonial Office it has not been found possible to meet the views of the State Governments. It has been explained to the Dominion and State Governments in a despatch of the 13th of November, 1908, that is a mistake to regard these duties as a case of taxation of the Crown by the Crown. The stamp duties are not, as a matter of fact, levied upon the issue of Government securities, but they represent a composition for the duties payable by holders of the stock upon transfer from one holder to another. It is quite open to any Colonial Government to issue stock without compounding for the duties, and similar duties are levied upon the issue of all municipal stocks in this country. To remit these duties would therefore be merely for the Crown to transfer revenues properly receivable by the Imperial Government from persons resident in the United Kingdom to the Crown in the Dominions.

## XVIII.

## COPYRIGHT.

Since the date of the Colonial Conference replies have been received from the various Governments as to their



views on the subject of the proposed insertion in the Imperial Copyright Bill of certain clauses applying to the British Possessions.

The Government of Natal objected to the proposed clauses as curtailing the power of legislation already possessed by the Colonial Parliament. The Government of the Cape of Good Hope were of the opinion that the draft clauses satisfied the main objections which were originally submitted.

The Governments of Newfoundland and of New Zealand concurred in the proposed clauses.

The Government of the Commonwealth of Australia considered that the proposed clauses might be read as restricting the powers of the Commonwealth to legislate with regard to copyright in works produced outside Australia.

In view of the objections raised by the various Dominion Governments, His Majesty's Government decided that it would be better to postpone any attempt to deal comprehensively with copyright and to leave untouched the sections of the Act of 1842 and 1886 which applied to the Colonies. As there were certain specific points on which an amendment of the law had long been necessary, and as it seemed impracticable to obtain the consent of all the Dominions to any Imperial Bill affecting copyright within their jurisdiction, it was suggested in despatches of the 2nd and 3rd September, 1908, to the Dominion Governments that an endeavour should be made by means of a subsidiary Conference to arrange for concurrent legislation by the Dominion and the Imperial Parliaments.

At the Berlin Conference of 1908 His Majesty's Government explained that the agreements arrived at there could not be accepted finally by them unless and until they obtained the concurrence of the Dominion Governments to the proposed alterations in the existing conventions. The decisions of that Conference were most carefully examined by a Committee appointed by the Board of Trade from the point of view of the United Kingdom and subsequently a subsidiary Imperial Conference covering the whole field of copyright was held under the presidency of Mr. S. Buxton, at which the Imperial Conference Secretariat was represented by Mr. H. W. Just, C.B., C.M.G. The results of this Conference are set out in Parliamentary Paper, [Cd. 5272].

#### XIX.

##### IMPORTATION OF LIVE CATTLE FROM CANADA.

At the Colonial Conference Sir Wilfrid Laurier drew attention to the view of His Majesty's Government regarding the prohibition of the importation of live cattle from Canada into the United Kingdom. The question has accordingly received the most careful consideration by the Board of Agriculture, but it has not been found possible to alter the existing rules on the subject. The Board of Agriculture pointed out in a letter of the 8th of July, 1907, which was communicated to the Government of Canada, that the existing requirements for the slaughtering of cattle have, in the case of the Argentina, proved no obstacle to the development and maintenance of a large and valuable trade, and that the same remark applied to the United States and also to Canada. The rule applied not merely to all foreign countries, but also to Australia and New Zealand, and was a sanitary law of universal application

and of great importance to stock owners at home as a valuable safeguard against the introduction of disease, and yet was not inconsistent with the transaction of a large and growing trade. The necessity of maintaining the freedom of Great Britain from disease was such as to render it impossible to give up any of the precautions which had hitherto been found necessary. The necessity of precautions has been emphasised by the recent outbreak of disease in cattle in the United States in close proximity to the Canadian boundary, though the spread of the disease to this country has so far been avoided by the prompt measures of precaution taken, at the suggestion of the Board of Agriculture and Fisheries, by the Canadian Government.

#### XX.

##### RADIO-TELEGRAPHIC CONVENTION OF 1906.

In a despatch of the 31st of July, 1907, the Secretary of State informed the Dominions that His Majesty's Government had decided to ratify the Radio-Telegraphic Convention, and enquired whether the Dominion Governments desired to adhere to it. It was pointed out that, under the Convention, in future Conferences the British Empire would be able to obtain the same amount of representation as under the Postal Union.

The Governments of Canada, the Commonwealth of Australia, and New Zealand decided to adhere to the Convention. The Government of Newfoundland decided not to adhere at present, but stated that they would watch with interest the development of the principle involved in the Convention.

The Governments of the Cape of Good Hope, of Natal, and the Transvaal decided to adhere, but the Government of the Orange River Colony, as an inland Colony, decided not to adhere at present.

The ratification of the Radio-Telegraphic Convention accordingly took place on the 1st of July, 1908, when adhesion was notified on behalf of the adhering Dominions. At the same time, notification was made that the Dominions which adhered to the Convention—like the Imperial Government—reserved the right referred to in Article 2 of the final protocol of exempting certain coast stations from the obligations of inter-communication.

In notifying the adhesion, the Secretary of State suggested that a vote should be claimed in due course on behalf of the South African Colonies as a whole, rather than on behalf of the two maritime Colonies only, although in actual practice the exercise of the vote would presumably be governed by the wishes of the maritime Colonies. It has also been suggested that the Colonies should unite in paying one subscription to the Bureau. These suggestions have now taken effect as a result of the Union of the Colonies, and the Union has adhered as a single whole to the Convention.

#### XXI.

##### VOTING OF DOMINIONS AT INTERNATIONAL CONFERENCES.

The question of the voting powers of the Dominions at International Conferences was discussed at the Colonial Conference, not as a general question but in connection with the Radio-Telegraphic Convention. Under that



Convention His Majesty's Government secured the possibility of obtaining at future Conferences, if a sufficient number of Dominions adhered, probably the same number of votes as is accorded to the British Empire under the Postal Union Convention of Rome, namely, six.

It was originally proposed at the Conference on Electrical Units and Standards held in London in October, 1908, that every State should have a vote without regard to the number of its delegates, the British Dominions beyond the Seas to be on the same footing as other States. The German Government, however, objected to this proposal; they considered that on mainly scientific questions it was not fair that countries like Natal, Newfoundland, or even New Zealand, should be on the same footing as the great European Powers. They therefore considered that they were entitled to demand that only one vote should be given to the British Empire, including all the British Possessions, but they were prepared to agree to a vote being given both to India and Australia in addition to Canada. This proposal was accepted by His Majesty's Government, but only in view of the fact that Natal, Newfoundland, and New Zealand had decided not to send delegates, and that the Cape of Good Hope had requested to be represented by the British delegate, and the matter will no doubt require reconsideration in view of the Union of South Africa.

## XXII.

### MARRIAGE FACILITIES.

The question of the existing facilities for marriage between British subjects dwelling in the Colonies and British subjects resident in the United Kingdom was laid before the Colonial Conference, but was not discussed owing to want of time and the number of other matters before the Conference.

The Secretary of State accordingly forwarded in a despatch of the 20th of June, 1907, to the Governors-General and Governors a memorandum which had been drawn up by the Registrar-General dealing with this question, and the draft of a Bill indicating the lines on which it was suggested that legislation should be proceeded with to provide for improved facilities.

In this memorandum it was pointed out that there was need for further facilities for marriage in cases where one of the parties to the intended marriage resided in the United Kingdom and the other in a British Colony.

In England a civil marriage by certificate involves the residence by both parties seven days before notice can be given, and an interval of twenty-one complete days must intervene after the date of the notice before the marriage.

A civil marriage by a licence involved a residence of fifteen days by one party before the notice, and one week-day must intervene after the notice and before the marriage; in this case residence in England on the date when the notice was given was all that was required of the other party.

The prime object of giving notice of marriage was to allow of any proper legal objection being taken before the marriage was solemnized, and it was clear that if this public notice was to be of real value it must be given in the place where the person concerned had usually resided.

Under the present system there was no provision by which notice of an intended marriage in any Dominion

could be given in this country, nor by which notice of an intended marriage in this country could be given in any of the Dominions.

It was proposed in the draft Bill to enact that in the case of an intended marriage in England between a British subject dwelling in England and a British subject dwelling in a British Colony, in which notice of marriage could be given or banns published and a certificate issued by an authorised officer stating that all legal requirements had been complied with in accordance with the laws and regulations in such Colony, it should be lawful for such certificate to be accepted as authority for the marriage, by the person whose duty it was to register the marriage, in respect of the party dwelling in the Colony, in the same manner as if it had been a certificate issued by the Superintendent Registrar of another district in England. Similarly when the necessary arrangements had been made in a British Colony by Statute or otherwise, it should be lawful in the case of an intended marriage in a British Colony between a British subject dwelling in such Colony and a British subject dwelling in England for the party in England to give notice of marriage in the same manner as if that party were about to be married in England, and that the Superintendent Registrar should accept the notice and issue a certificate which should be accepted in the Colony as an authority for the marriage in respect of the party dwelling in England.

The Governments of the Canadian Provinces, which have the power to legislate as to the performance of marriage, are divided in opinion as to the need for the proposed Act. The Provinces of Ontario, Nova Scotia, New Brunswick, Manitoba, and Saskatchewan, appear on the whole to be opposed to legislation; those of Quebec, Prince Edward Island, British Columbia, and Alberta, seem to have no objection. No reply has been received from the Government of Newfoundland.

The Government of the Commonwealth stated that they considered that no additional facilities for marriage were at present necessary in Australia. They considered it very undesirable that the Parliament of Great Britain should legislate with respect to marriages in Australia, as all necessary facilities could be provided by local legislation. They suggested, however, that if the Bill were considered necessary to provide increased facilities for marriages in England, where one of the parties was domiciled in a British Colony, such facilities might perhaps be extended to cases where both parties to an intended marriage in England were domiciled in British Colonies.

The Government of New South Wales reported that they had no objection to the terms of the draft Bill. The Government of Victoria stated that no further facilities were required in that State, as a person could be married in Victoria by a clergyman upon the day of arrival, or by the Government Statist, or by a Registrar, upon giving three days' notice. The Government of Queensland did not raise any objection to the proposed legislation, but pointed out that no notice or certificate of any kind was required before marriages could be celebrated in Queensland, and that, therefore, the Act would have little practical effect so far as it applied to the State. The Government of South Australia considered that no necessity existed for legislation increasing the facilities for marriages in the State, as no length of residence was required before a marriage took place. The Government of Tasmania



replied that the legislation was not necessary as far as it affected Tasmania. The Government of Western Australia were of the same opinion as regards that State.

The Government of the Cape of Good Hope pointed out that the Colonial law already allowed ministers of religion to accept certificates of publication of banns outside the Colony, which certificates dispensed with the necessity of publishing banns within the Colony. This permission, however, is of no value in the case of persons other than members of the Established Church of England. The Government of Natal were of opinion that the present facilities for marriage were adequate, and there was no necessity for the introduction of the proposed legislation as far as it concerned Natal. The Government of the Transvaal had no objection to the proposed legislation, while the Government of the Orange River Colony were in favour of such legislation.

In view of the divergence of opinion on the subject and of the fact that Imperial legislation could only be justified by a consensus among all the Dominions and States, it appeared impossible to proceed with the Draft Bill as it stood. The Registrar-General suggested that it would be desirable to pass a short Act, merely providing for the acceptance in this country of certificates issued in the Dominions, and for the issue in this country for use in such Dominions as would recognise them, on the understanding that an Order in Council would be issued in each case where a Dominion made provision for the issue of such certificates or their acceptance. A draft bill based on these principles has been prepared and is now under the consideration of the Home Office.

### XXIII.

#### SUEZ CANAL DUES.

Since the Colonial Conference of 1907 the question of the possibility of reducing the Suez Canal dues has been continuously considered by His Majesty's Government. Difficulty has been placed in the way by the fact that the Council of the Canal Company have held the opinion, on a careful estimate of the probable future of the shipbuilding industry, that their first duty is to provide adequate facilities for further development of the canal traffic by widening and deepening the canal so as to permit of the passage of larger ships than those which at present use the canal. His Majesty's Government have, however, managed to secure a reduction from fr. 7.75 to fr. 7.25 a ton, to take effect from the 1st of January, 1911.

*October, 1910.*



Dominions  
No. 31.

Confidential.  
(33522/10.)

## MEMORANDUM

ON

## MERCHANT SHIPPING LEGISLATION.

The question of the powers of the Governments of the Dominions with regard to Merchant Shipping legislation was exhaustively discussed in 1907, at the Navigation Conference of that year. Australia and New Zealand were adequately represented, and though much divergence of opinion displayed itself during the discussions, ultimately a full agreement was come to with regard to the principles on which the Merchant Shipping legislation of the Dominions should be based.

The discussion which took place was based, as far as was possible compatibly with the nature of the subject, not merely on legal grounds or on the interpretation of the existing Acts, but upon considerations of expediency and convenience. The important Resolution is No. 9, as explained by No. 10. They read as follow:—

p. V. of  
[Cd. 3567].

9. Vessels to which Colonial conditions are applicable.

That the vessels to which the conditions imposed by the law of Australia or New Zealand are applicable should be (a) vessels registered in the Colony, while trading therein, and (b) vessels wherever registered, while trading on the Coast of the Colony. That for the purpose of this Resolution a vessel shall be deemed to trade if she takes on board cargo or passengers at any port in the Colony to be carried to, and landed or delivered at, any port in the Colony.

Passed unanimously.

10. Coasting Trade.

A vessel engaged in the oversea trade shall not be deemed to engage in the Coasting Trade merely because it carries between two Australian or New Zealand ports,

(a) passengers holding through tickets to or from some oversea place,

(b) merchandise consigned on through bill of lading to or from some oversea place.

Passed unanimously.

Since that Conference the Parliament of New Zealand in an Act of 1909 has legislated so as to carry out in its application to New Zealand the Resolution of the Conference by limiting to vessels coasting in New Zealand or registered in the Dominion the application of provisions of the New Zealand shipping legislation which differ from the provisions of the Imperial Merchant Shipping Acts.

The only point of any consequence in which the legislation of New Zealand, as contained in the Consolidating Act of 1908 and in the Amending Act of 1909, was open to criticism, was the provision in section 41 of the reserved



Bill, which provides that the conditions laid down by New Zealand shall regulate Bills of Lading wherever entered into in respect of vessels conveying goods to and from New Zealand. After some correspondence the Government of the Dominion agreed to restrict the operation of the section to the carriage of goods from New Zealand, and the Bill was assented to on this understanding in March, 1911.

In the case of the Commonwealth of Australia the Navigation Bill was recast in 1908, so as to correspond generally with the recommendations of the Navigation Conference of 1907. After further discussion with the Government of the Commonwealth practically complete agreement was arrived at between the Imperial Government and the Commonwealth Government as to the terms of the Bill. The Bill, however, did not pass that year, and in 1909 it was not found possible to make substantial progress with it. It has been reintroduced in 1910, and the most important point in which it goes beyond the recommendation of the Conference of 1907, as interpreted by the Imperial and the Commonwealth Governments, is a question as to the validity of certificates returned by the Board of Trade to officers of vessels after cancellation in Australia. The Bill of the Commonwealth proposes that such certificates should not be valid for use in Australia, while the Imperial Government in 1908 secured the agreement of the Commonwealth Government to a proposal that this provision should, in accordance with the principles laid down at the Navigation Conference of 1907, be restricted to the case of vessels coasting in the Commonwealth or registered therein.

It now appears that the Government of New Zealand desire to discuss the question of uniformity in shipping legislation and the extension of the powers of the Dominions with regard to such legislation at the Imperial Conference of 1911. The following may be among the reasons which have prompted this desire.

There is a certain difference in the legislative powers of New Zealand and those of the Commonwealth of Australia with regard to merchant shipping. By sections 735 and 736 of the Imperial Merchant Shipping Act of 1894 provision is made as follows:—

*Powers of Colonial Legislature.*

735. (1) The Legislature of any British possession may by any Act or Ordinance, confirmed by Her Majesty in Council, repeal, wholly or in part, any provisions of this Act (other than those of the Third Part thereof which relate to emigrant ships) relating to ships registered in that possession; but any such Act or Ordinance shall not take effect until the approval of Her Majesty has been proclaimed in the possession, or until such time thereafter as may be fixed by the Act or Ordinance for the purpose.

(2) Where any Act or Ordinance of the legislature of a British possession has repealed in whole or in part as respects that possession any provision of the Acts repealed by this Act, that Act or Ordinance shall have the same effect in relation to the corresponding provisions of this Act as it had in relation to the provision repealed by this Act.

736. The Legislature of a British possession may, by any Act or Ordinance, regulate the

coasting trade of that British possession, subject in every case to the following conditions:—

- (a) the Act or Ordinance shall contain a suspending clause providing that the Act or Ordinance shall not come into operation until Her Majesty's pleasure thereon has been publicly signified in the British possession in which it has been passed;
- (b) the Act or Ordinance shall treat all British ships (including the ships of any other British possession) in exactly the same manner as ships of the British possession in which it is made;
- (c) where by treaty made before the passing of the Merchant Shipping (Colonial) Act, 1869 (that is to say, before the thirteenth day of May, eighteen hundred and sixty-nine) Her Majesty has agreed to grant to any ships of any foreign State any rights or privileges in respect of the coasting trade of any British possession, those rights and privileges shall be enjoyed by those ships for so long as Her Majesty has already agreed or may hereafter agree to grant the same, anything in the Act or Ordinance to the contrary notwithstanding. (It does not appear that any such Treaties exist.)

In the view of His Majesty's Government, which rests on the highest legal authority, these sections accurately define the powers of the New Zealand Parliament subject to the remark that, of course, the Parliament of the Dominion can re-enact any provisions of the Imperial Merchant Shipping Act, and subject to the fact that by certain other sections of the Imperial Merchant Shipping Act special powers of legislation are given on certain matters to Dominion Parliaments.

In the case of the Commonwealth of Australia these powers are undoubtedly possessed by the Commonwealth Parliament, but in addition section 5 of the Commonwealth of Australia Constitution Act 63 and 64 Vict. ch. 12, provides that "laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth." The meaning of this clause would appear to be to extend the legislative powers of the Commonwealth with regard to merchant shipping not only to registered vessels and vessels engaged in the coasting trade, but to vessels even if not registered or engaged in the coasting trade strictly speaking, if they fell within the ambit of the words of the section. Of course the section means much more than that, in that it puts the other laws of the Commonwealth in force on board these vessels, but with regard to merchant shipping its effect must be as stated.

The precise meaning of the clause has fortunately received judicial interpretation in the High Court of the Commonwealth in 1908 in the case of the *Merchant Service Guild of Australasia v. Archibald Currie and Company Proprietary, Limited*.<sup>\*</sup> In that case a Joint Stock Company registered in Victoria were owners of a line of ships registered in Melbourne and engaged in trading between Australia, Calcutta and South Africa.

<sup>\*</sup> 5 C. L. R. 737.



The officers of the Company's ships resided in Australia and were engaged there, but the ships' articles were filled in and signed in Calcutta. The officers, though not entitled to be discharged in Australian ports, were allowed to leave at such ports if they wished with the consent of the master. The ships did no inter-State trade but occasionally made short trips from Calcutta to other Indian ports. The organisation of employees to which the officers belonged filed a claim in the Commonwealth Court of Conciliation and Arbitration for the settlement of a dispute between the officers and their employers as to the wages, hours, and conditions of labour during the voyages of their ships. The matter came before the Commonwealth High Court on a special case stated by the President of the Commonwealth Court of Conciliation and Arbitration under Section 31 of the Commonwealth Conciliation and Arbitration Act, 1904. It was argued in favour of the Merchant Service Guild that Section 5 of the Constitution Act must be interpreted in a wide sense, so as to go beyond the powers conferred on the Commonwealth Parliament by Sections 735 and 736 of the Imperial Merchant Shipping Act, 1894.

It was also argued that the laws of the Commonwealth should be regarded as applying to disputes between the people of the Commonwealth, not only in Australia but wherever the parties may be.

The Court rejected the arguments and decided in favour of the Company. They held that in the case of the ships in question, even supposing that the port of departure was an Australian port, which was doubtful, it was impossible, as a matter of fact, to hold that the port of destination was also within the Commonwealth. "The only interpretation" said O'Connor J., "which will give any effective operation to the section, is to take the port of destination as meaning the port of final destination or last port of the voyage. The words of section 5 would then be taken to describe a round voyage beginning and ending within the Commonwealth. That is the class of voyage to which in my opinion the section was intended to apply." The Judge went on to point out that this interpretation was in accordance with the state of facts which must be taken to have been within the knowledge of the British Legislature at the time section 5 was passed. It was known that a shipping trade carried on by ships owned and registered in Australia and manned and officered by Australian citizens, had for many years existed in Australia and was rapidly increasing, and that it extended to New Zealand, the Pacific, and Indian ports. It was reasonable to impute to the British Legislature an intention to place the ships engaged on round voyages in such a trade in the same position as regards Australian laws, as the ordinary British ship holds in regard to British laws, namely, that while on a voyage coming within the meaning of the section, the Australian ship should be for the purposes of Commonwealth laws a floating portion of Commonwealth territory. If the voyage were of that description it was immaterial to what part of the world it might extend. If it were a round voyage beginning at an Australian port, calling at Calcutta or any foreign port, and ending in an Australian port, the ship during the whole voyage would be under the Commonwealth laws and under the jurisdiction of the Commonwealth Courts. He held, on the evidence, that the voyages in which the ships in question were engaged were not such voyages.

The effect of this judgment is seen in the Merchant Shipping Bill of the Parliament of the Commonwealth, inasmuch as a new definition has been introduced in section 5, namely:—"Australian tradeship" includes every ship (other than a limited coast-trade ship, or river and bay ship) employed in trading or going between places in Australia, and every ship employed in trading between (a) Australia, and (b) Territories under the authority of the Commonwealth, *New Zealand or the Islands of the Pacific*." The words in *italic* represent the changes made in the section since 1908, when the Bill was first drafted in its present form. Similarly, the definition of "Foreign-going ship" now reads "Foreign-going ship includes every ship (other than an Australian trade-ship) employed in trading or going between places in Australia and places beyond Australia."

In the case of New Zealand there have been decided by the Supreme Court of New Zealand two cases of great importance, which have, no doubt, influenced the Government of the Dominion in their present request. In the case of *In re Award of Wellington Cooks' and Stewards' Union*,\* the issue was whether an award by the New Zealand Court of Arbitration as to the minimum rate of wages to be paid to cooks and stewards and seamen on vessels trading between New Zealand and Australia was binding upon two steamship companies, the first, the Union Steamship Company of New Zealand, being registered in New Zealand, with the head offices and management in the Dominion, and the vessels affected registered there. The other Company, the *Huddart-Parker Company Proprietary, Limited*, was a Company registered in Victoria, where it had its head office and general management and where its ships were registered. The articles of the Union Steamship Company's ships were signed in New Zealand and the men were paid there, while those of the Huddart-Parker Company's vessels were signed in Australia, where also the men received their pay. It was found, as a matter of fact, that the awards made by the Arbitration Court were not observed in full by the Companies, inasmuch as they called upon the employees in some of their vessels to do work which under the award should have been paid for as overtime, and which was not so paid for. This happened while the ships were in Australian or Fijian ports or at sea as well as when they were in New Zealand waters or harbours, and the Court of Arbitration sent a case for the opinion of the Supreme Court as to the extent of the jurisdiction of that Court.

It was held by the Chief Justice† that the power given to the New Zealand Legislature by Section 53 of the Constitution Act of 1852 covered acts done beyond the territories of New Zealand. This was necessary, for otherwise the power given, which is to make laws for the peace, order, and good government of New Zealand, could not be effectively carried out. The Chief Justice said that the laws of New Zealand applied to persons on board a New Zealand ship, as distinct from a British ship, even beyond the territorial limits of New Zealand. He admitted that the doctrine laid down in his judgment was a

\* (1906) 26 N.Z.L.R. 374.

† His judgment is certainly so expressed as to be very doubtful law. But all that was actually decided could equally well have been decided under Section 735 of the M.S.A., 1894, which cannot be limited to territorial waters only but must apply to registered vessels wherever they may be. For a criticism of his judgment see Journ. Soc. Comp. Leg., 1909, No. 20, pp. 208, sq.



development of the doctrine of self-government, but he regarded it as part of the British constitution to allow growth and development of powers, and that such a power had not hitherto been claimed under the provisions of the Constitution Act was no proof that the Act did not contain a potency of both legislation and administration not hitherto exercised in the Colony.

On these grounds he held that the award made by the Court of Arbitration bound New Zealand vessels even in Australia, and he also held that they did not bind Australian vessels, on the ground that the Arbitration Courts could not be assumed to deal with an Australian Company or with Australian ships. It was possible for the Australian Parliament to legislate for those vessels, and the New Zealand Parliament had not, in his opinion, legislated in the Arbitration Act for foreign vessels owned by foreign owners even if it had power to do so, and the Act could not be considered as referring to such vessels. He stated, however, that if the Huddart-Parker Company's vessels were to engage in purely coastal trade and make contracts in New Zealand with seamen and others on board their ships for labour in coastal trade, then the arm of the New Zealand law was long enough to reach them.

It should be noted that at the Merchant Shipping Conference of 1907 no stress was laid upon this judgment by the Prime Minister of New Zealand, and the judgment has not passed without criticism. The Chief Justice has, however, in a recent case reasserted his conviction of the soundness of the judgment.

It will be observed that in that case the actual result of the judgment was to enforce New Zealand conditions only upon New Zealand registered vessels. But in a subsequent case the remark of the Chief Justice as to the powers of New Zealand with regard to the coastal trade was carried into effect, with the result of conflict between an award of the High Court of the Commonwealth of Australia and the law of New Zealand. This case was that of the *Huddart-Parker and Company Proprietary (Limited) v. Niam*.\*

In that case the plaintiff was a proprietary company incorporated under the State of Victoria and owning steamships which were registered in Melbourne, although the Company had agents and offices in New Zealand. These steamships traded with New Zealand and were engaged in the coastal trade. The seamen and officers were engaged on articles signed in Melbourne or in Sydney, which were for six months and fixed the wages of the persons employed. The wages were paid by monthly advances at Melbourne or Sydney according to the place of engagement. The wages in question were in some cases equal to, or greater than, the current rate of wages payable in New Zealand, but were in some cases less than the current rate of wages. The wages were fixed by an award of the Commonwealth Court of Conciliation and Arbitration which was constituted by virtue of the Commonwealth Conciliation and Arbitration Act, 1904.

The Marine Department of the New Zealand Government claimed that while the ships were in New Zealand ports and while they were trading between two New Zealand ports they were subject to the provisions of Section 75 of the Shipping and Seamen's Act, 1908, of the Parliament of New Zealand. That Act provides that

in the case of seamen engaged in New Zealand or engaged abroad but employed in New Zealand, the seamen, while so employed, shall be paid, and may recover, the current rate of wages for the time being ruling in New Zealand. It also provided (Sub-section 2) that the superintendent of the port at which a ship loads or discharges cargo carried coastwise shall notify the master of the ship of the provisions of the section, and the superintendent is empowered to have the ship's articles endorsed so as to show clearly the amount of wages payable. By the same section the Collector of Customs is authorised to detain the final clearance of the ship until he is satisfied that the crew has been paid the current rate of wages ruling in New Zealand, or any difference between the agreed rate of such wages and the New Zealand rate of wages. The Company held that they were only obliged to pay the rate of wages provided for in the articles, and the questions submitted to the Court were whether Section 75 of the Shipping and Seamen's Act, 1908, applied to the Company's ships while in New Zealand ports and while at sea between New Zealand ports; whether the Superintendent of Mercantile Marine had the right to endorse the articles of the Company's ships as provided in Sub-section 2 of Section 75 of the Act, and whether seamen employed on the Company's ships could sue in New Zealand for the current rate of wages ruling in New Zealand, notwithstanding that a different rate of wages was fixed by the ship's articles.

Though the opinions of the Court were somewhat divergent, it was decided by the Court that it was open to the seamen to claim the payment of the extra wages which represented the difference between the rates enforced by the Arbitration Court in the Commonwealth and the rates prevailing in the coastal trade of New Zealand, and that the refusal of a clearance was a legitimate means of enforcing the right of the sailors to those wages. The Court held that the provisions of the Shipping Act were invalid\* so far as they purported to confer upon seamen the right to sue for all their wages, as in that case the Act came into conflict with Section 166 of the Merchant Shipping Act of 1894, which provides that when a seaman is engaged for a voyage or engagement which is to terminate in the United Kingdom he shall not be entitled to sue in any Court abroad for his wages except on certain conditions, which had not been fulfilled in the cases in question. It was true that the case actually before the Court was not one of a voyage which was to terminate in the United Kingdom.† But the Chief Justice held that as the Victorian Parliament had adopted similar provisions to Section 166 of the Act of the Imperial Parliament by Act No. 1557, the same respect should be paid to the Victorian Act as was paid to the Imperial Act, and he therefore held that the seamen could not claim for their wages but only for the extra payment required, under the legislation of New Zealand, to make their wages up to the standard prevailing in the coasting trade.

\* *I.e.*, the Court did not hold that the power given by Section 736 of the Merchant Shipping Act, 1894, extends to repealing a provision of the Imperial Act even as regards coasting vessels. But the judgment in effect gives the right to alter materially, and it is not easy to see why they did not allow repeal.

† The Court overlooked the fact that Section 264 of the Merchant Shipping Act, 1894, gives the Victorian enactment Imperial validity.



He also held that power to endorse the articles had been properly invested in the Superintendent of Mercantile Marine, and that the Collector of Customs could properly refuse a clearance of a vessel if the conditions as to payment had not been complied with.

Williams J. agreed with the Chief Justice; it is not quite clear how far he held that Section 75 in purporting to give a seaman the right to sue for the wages specified in the articles was repugnant to Section 166 of the Imperial Act and to that extent void. Chapman J. agreed in substance with the Chief Justice and Williams J., but not in the grounds given by them for their decisions. He reconciled Section 166 of the Imperial Act with Section 75 of the New Zealand Act on the ground that the two Sections dealt with totally different matters, and that therefore there was no repugnancy. The New Zealand Act provided for an addition to the wages of the crew, to be enforced not by suit in the Courts but by the action of the Collector of Customs in refusing a clearance, so that, so interpreted, there was no real discrepancy between the Dominion and the Imperial Acts. On the other hand Edwards J. held that Section 75 was *ultra vires*, as conflicting with Section 166 of the Imperial Act, and that therefore a seaman was neither entitled to extra wages nor could he sue for them, nor could the Collector of Customs refuse a clearance. He recognised that there was a difference between ships registered in Victoria and ships registered in the United Kingdom, and that strictly speaking the provisions of a New Zealand Act could not be repugnant to those of a Victorian Act,\* but he relied on the argument that if a distinction were made in the treatment of ships registered in the United Kingdom and of ships registered in Victoria, the purpose of Section 736 of the Imperial Act, which requires that vessels should be treated alike wherever registered, would be defeated and therefore that Section 75 must not be held to apply to vessels registered in Victoria. He called attention also to the unfairness of the position which would result from enforcing Section 75. In several cases the wages under the articles were greater than those payable in New Zealand, and yet the owners could not reduce the wages on that ground, whereas they were required to increase the wages in the cases in which they were not equal to those payable in New Zealand.

It is not exactly easy to follow the judgment of the majority of the Court. They were not apparently willing to claim that the power of regulating the coasting trade conferred upon the New Zealand Parliament by Section 736 of the Imperial Act of 1894 extended to altering a provision of the Imperial Act. On the other hand, they held that the New Zealand Parliament could completely alter the effect of the Imperial Act by changing the rate of wages of a seaman engaged for a voyage which was to terminate in the United Kingdom, by giving him a right to recover in the New Zealand Courts or by the action of the New Zealand Marine Department the difference between the wages payable to him under the articles and the wages current at the time in the coasting trade of New Zealand.

It is difficult to see how direct repeal of a provision of an Imperial Statute differs substantially from the power claimed for the Dominion Parliament by the majority of

\* He also overlooked the effect of Section 264 of the Merchant Shipping Act, 1894.

the Court. It is clear that the intention of the section of the Imperial Act in question is that a seaman shall be entitled normally only to sue for wages in the United Kingdom, and the wages in question are clearly those stipulated for in his agreement. To give him the right to higher wages during a portion of his service and to enable him to sue for the difference between his ordinary wages and the higher wages is in everything but form to alter substantially the section of the Imperial Act. It is difficult to understand why the majority of the Court were not content to hold that the power to regulate the coasting trade was sufficiently wide to enable the Parliament to repeal provisions of the Imperial Act which would otherwise normally apply. It may, indeed, be doubtful as a matter of history whether, in giving in 1869 to Colonial Parliaments the power to regulate the coasting trade, it was meant to do more than confer upon the Parliaments the right of opening or closing that trade to such vessels as they thought fit; but the Act must be read not with regard to the original intention of the clause, but to the effect of the wording, and the power to regulate the coasting trade as given in the Act of 1894 is so widely expressed that it seems clear that it must extend to repealing provisions of the Imperial Act which would otherwise be inconsistent with the local legislation.

If this were not the case the power to regulate the coasting trade which has been conceded by the Imperial Government as belonging to the Parliaments of the Dominions would become little more than meaningless, and it would seem simpler to place on the power of regulating a wider meaning than to accomplish the same result by ingenious efforts to reconcile the provisions of the Dominion and the Imperial legislation.

It must also be remarked that in the case in question the provisions of the Imperial Statute had no application, for not only was the vessel in question registered in Victoria, but the seamen were not engaged for a voyage or engagement which was to terminate in the United Kingdom.

All the members of the Court appear to have acquiesced in the view that the Victorian Statute No. 1557 which adopted the provisions of the Imperial Act, 1894, including Section 166, was to be regarded in the light of a Colonial Statute. The Chief Justice merely said that, as the vessels were registered and controlled by Statute which the Imperial Legislature had authorised the State of Victoria to pass they ought to have the same protection as British ships registered in England; apparently admitting that the Act had not, strictly speaking, the force of an Imperial Act, and this view was clearly expressed by Edwards J. If this were the case, then it is clear that the provisions of the New Zealand Act could not possibly be invalid, as there was nothing to which they could be repugnant except the law of another Colony. But as a matter of fact the Court appears to have overlooked the fact that by Section 264 of the Imperial Merchant Shipping Act of 1894 the same effect as that of the Imperial Act itself is given to Acts passed by legislatures of British Possessions, which applied to British ships registered at, trading with, or being at any port in that Possession, any provisions of Part 2 of the Merchant Shipping Act of 1894 which would not otherwise apply.

The Victoria Parliament by Act No. 1557 applied *mutatis mutandis* to ships registered in Victoria the



provisions of part 2 of that Act including Section 166, and it would appear therefore that as a result there is imported into the Imperial Act a provision to the effect that if a seaman is engaged for a voyage terminating in Victoria he shall not be entitled to sue abroad for his wages. There does not therefore appear to be any substantial difference between the case of vessels registered in the United Kingdom and vessels registered in a Colony, if that Colony has adopted under Section 264 the provisions of Section 166 of the Act of 1894.

It may also be noted that the Court did not discuss the effect of Section 5 of the Commonwealth of Australia Constitution Act of 1900. In this case the wages payable on board a ship were defined by an Award of the Court of Conciliation and Arbitration of the Commonwealth of Australia established under a Commonwealth Act, and, if the laws of the Commonwealth are by an Imperial Statute to be in force on vessels whose first port of clearance and whose port of destination are in the Commonwealth, it would appear that under an Imperial Act they are in force even in New Zealand waters in the case of the *Huddart Parker & Company's* steamers.

The question would arise then whether the power given under Section 736 of the Imperial Merchant Shipping Act, 1894, is sufficiently extensive to enable the New Zealand Parliament to repeal a legislative provision dealing indirectly with merchant shipping which would otherwise apply to vessels which fall under Section 5 of the Commonwealth of Australia Constitution Act.

It seems hard to believe that such a power exists, and the New Zealand law can therefore only be reconciled with Section 5 of the Commonwealth Constitution Act on the reasoning adopted by Chapman J., viz.: that the right given was quite a new one and had nothing to do with the original right of the seaman to his wages. But this could be avoided in future by the Commonwealth providing that no addition to wages should be made while outside Australia on any ground.

But on whatever grounds the decision can be based it is perfectly clear that much confusion will inevitably arise in shipping matters unless some agreement can be come to between the various parts of the Empire as to uniformity of legislation.

The result of this judgment is that the owners of vessels which engage in the coasting trade of New Zealand, although they pay rates of wages fixed by the Arbitration award in Australia, are nevertheless bound to pay extra wages in cases in which the coastal rates prevalent in New Zealand exceed the rates which are prevalent in the Australian trade; but on the other hand they cannot disobey the award of the Arbitration Court, and they therefore cannot pay lower wages in those cases in which the Australian rates of wages which are laid down in the award exceed those prevalent in the New Zealand coasting trade.

There is therefore a clear conflict between the position of New Zealand and Australian legislation, and the conflict will no doubt be still more marked when the Commonwealth of Australia legislates on the subject, for its Merchant Shipping Bill\* contains clauses based on the

\* Sections 286, 287, 290. Those provisions allow a seaman to sue for all his wages in Australia and therefore according to the New Zealand judgment are *ultra vires pro tanto*, unless Section 5 of the Constitution Act covers the case, and clearly it would not do so in every case of coasting.

Shipping Act of New Zealand, which provides for the payment of Australian rates of wages in the coasting trade, and therefore New Zealand vessels which engage in the coasting trade of the Commonwealth will be subject to the law of New Zealand and also to the law of the Commonwealth, and there will no doubt be collision between those laws, just as there has been between the arbitration law of the Commonwealth and the law of New Zealand.

If it turns out, as seems to be the case, that the Australian Act would override the New Zealand law even in New Zealand waters, it seems certain that New Zealand would, naturally, desire to obtain increased power for the regulation of merchant shipping, as it would obviously be awkward if New Zealand were compelled to conform to coasting conditions in Australia while the Australians could not legally be compelled to conform to coasting conditions in New Zealand.

It should be noted that in the discussion of the case of the *Huddart-Parker & Company* the point was mentioned that it was very doubtful whether it would not be possible for the shipowners to make good the extra payment made in New Zealand by deducting from the wages earned outside New Zealand, so that the total amount paid would not exceed the amount provided for by the Australian Arbitration Award. The Court did not express any opinion as to whether this would be legal or not. In the case of the Commonwealth of Australia it has been recognised that this is a great difficulty, and it is attempted to dispose of it by a section which reads as follows:—

(1) No provision in any agreement, whether made in or out of Australia, shall be taken to limit or prejudice the rights of any seaman under this part of this Act.

(2) Where, by reason of a seaman's being entitled to a higher rate of wages while the ship on which he serves is engaged in the coasting trade—

(a) any deduction is made from his wages earned out of Australia; or

(b) he is paid a lesser rate of wages outside Australia than is usual in voyages of a similar nature,

it shall be deemed that the seaman is not paid wages in accordance with this Part of this Act while the ship is so engaged in the coasting trade.

Exactly to what extent this section will be upheld in the Courts it is difficult to say. The analogy of the *Peninsular and Oriental Steam Navigation Company v. Kingston*\* has been quoted by the Government of the Commonwealth as justifying legislation of this character. The cases are analogous but not precisely the same, and it is uncertain to what extent the Privy Council would follow their previous judgment if the matter came before them in a concrete instance.

In addition to the Bill of 1909, which has now received the Royal Assent, the New Zealand Parliament has, passed in 1910 the Shipping and Seamen Amendment Bill, which the Governor has reserved, and which makes important modifications in the existing law. By Clause 2 it is provided that the rate of wages prevailing in New Zealand shall be paid to all seamen on vessels plying or trading from New Zealand to the Commonwealth of

\* (1903) A.C. 471.



Australia and from New Zealand to the Cook Islands. By Section 3 it is provided that an extra tax of 25 per cent. of the amount of passage money or freight shall be levied on passenger tickets, bills of lading or shipping documents issued in respect of vessels trading from New Zealand to the Commonwealth or the Cook Islands if the vessels carry *any* Asiatics as part of the crew. These taxes will not, however, apply if these vessels comply with the provisions of Section 2 of the Act, that is to say, if all the crew, including Asiatics, are paid the New Zealand rate of wages.

The Bill was introduced and passed very quickly through the Parliament without much discussion in order to strengthen the hands of the Prime Minister at the Imperial Conference in 1911 in asking for extended powers for the Dominion in matters of merchant shipping.

It was admitted by the Government in the course of the discussion that the legislation must be reserved for the Royal Assent, but it was contended that the legislation was similar in principle to that of the legislation of the Commonwealth which claimed the right to control the sea between Tasmania and any part of the Australian continent.

It was admitted by the Attorney-General in the Upper House that it may be possible to evade the provisions of Section 2 and it is clear that Section 3 was inserted in the Bill as a means of meeting evasions of Section 2. It is indeed obvious that the provisions of Section 2 may be evaded by paying New Zealand rates while engaged in trading from New Zealand to Australia but deducting from the total wages of the employees the excess rates so paid.

In the case of discharges in Australia it is proposed by the Dominion Government that the Australian Government should secure that the crews should be properly paid in accordance with New Zealand conditions, but in cases of discharges abroad it was admitted that the law could be evaded. On the other hand, the New Zealand Government would enforce for the benefit of Australia similar provisions made by Commonwealth legislation. How in every case this was to be done was not stated and is by no means obvious.

It also appeared from the debate that the main object of attack was the Peninsular and Oriental Steamship Company, which at present has a steamship service to New Zealand. These vessels, which trade from Australia to New Zealand, do not seem ever to do coasting trade in New Zealand (if they did it seems that they could avoid difficulties for the time being by turning their Lascars into passengers and running the ships with white crews) but merely engage in trade between Australia and New Zealand and, of course, trade with the United Kingdom and elsewhere. They compete, it seems, effectively with the New Zealand Union Line and the Australian Huddart-Parker Line, and of course the rates of wages paid to Lascars, and in addition the conditions under which Lascars are carried, give them a real advantage in such competition.

With regard to Section 2 of the Act, it would probably be impossible to hold that it goes beyond the powers of the New Zealand Parliament so far as it is restricted to trade between New Zealand and the Cook Islands. The Cook Islands are a dependency of New Zealand, and there can be little doubt that trade with them is coasting

trade which can be regulated at pleasure by the Dominion Parliament. This follows, whatever view be taken of the effect of section 736 of the Merchant Shipping Act, 1894. On the other hand it is a very different matter when the regulation of the wages on board of vessels trading with the Commonwealth is concerned.

There is no real analogy between the relations of New Zealand and the Commonwealth and the relations of the continent of Australia and Tasmania. Tasmania is a part of Australia, and trade between the continent and Tasmania is unquestionably coasting trade. Similarly trade between New Zealand and the Cook Islands is coasting trade, but trade between New Zealand and the Commonwealth cannot possibly be so called.

Another mistake was made during the debate, in addition to the minor error of treating the Australian Navigation Bill as having been passed by the Parliament of the Commonwealth.

No notice was taken of the fact that the powers of the Commonwealth are, under the Constitution, different from those of the Parliament of the Dominion. As has been pointed out above, this fact was also overlooked by the Supreme Court of the Dominion and it seems clear that the point, which is by no means unimportant, has escaped the notice of the Legal Advisers of the Government in the Dominion.

The proposed legislation would, in the first place, be *ultra vires* with regard to vessels which do not fall under the Commonwealth law. The Parliament of New Zealand has power to regulate the wages payable in the coasting trade but it has no power to regulate wages payable otherwise than in the coasting trade.

If the Peninsular and Oriental Steamship Company engage in that trade they must pay coastal rates but as long as they do not engage in that trade they cannot be coerced by New Zealand legislation. Strictly speaking, it is true, New Zealand could, subject to cases covered by s. 166 of the Merchant Shipping Act, 1894, legislate to provide that coastal rates should be paid while the vessel was within the three-mile limit, but such legislation would be of infinitesimal importance and could be evaded by the Company with the greatest possible ease.

Further, with regard to all ships whose first port of clearance and whose port of destination are in the Commonwealth, the Commonwealth law applies under section 5 of the Commonwealth of Australia Constitution Act, 1900, and it does not seem that the New Zealand Parliament can override the Commonwealth law, which thus has Imperial validity. Of course if the term "trading from New Zealand to the Commonwealth" is interpreted only to include vessels which are registered in New Zealand or in some sense are domiciled there no conflict might arise, but it is very doubtful whether New Zealand does not intend to regard the Huddart-Parker vessels as falling within its sphere of activity.

More serious is the position with regard to section 3 of the Bill, which is avowedly an attempt to exclude Asiatics from trading with New Zealand. It should, however, be noted that the attempt is not absolute, that is to say, that no attempt is made to interfere with vessels manned by Asiatics which merely trade with New Zealand or some other foreign country or some British possession, and which do not trade from New Zealand to Australia or the Cook Islands. It should be noted further that the legislation



cannot be said to be *ultra vires* the Dominion Parliament, and that it therefore does not stand on the same footing as section 2, the objections to which are legal as well as political. The discrimination in section 3 is directed by name against Asiatics, and is avowedly, by the admission of the Government in Parliament, directed against Asiatics. It forms, therefore, a direct contradiction to the policy which has been consistently adopted by the Imperial Government, that direct discrimination against Asiatics shall not be permitted. It would thus be objectionable apart from the question of the substance of the legislation. The substance, however, is open to grave objections. It is true that as a matter of practical importance the question may not be of great moment, because the only result, as far as known, would be that the Peninsular and Oriental Company will withdraw its services to New Zealand, and it is doubtful whether the Company, which has many other important interests, is inclined to trouble itself very much with regard to the loss of this traffic, but there is a good deal more in the matter than this. If the proposal to exclude from such trade is agreed to, it will be impossible to resist the further demands which will doubtless be made that it shall be excluded *de facto* (for prohibitive duties are in effect exclusion) from all trade with the Dominion, and this raises the question of the position of foreign ships manned by native Asiatic crews. Take, for example, the case of the Japanese: the Japanese may at any time desire to establish a line of steamships trading to New Zealand from Japan and running on to Australia. It is clear, indeed, that in the future if Japanese trade relations are to increase such a line will certainly come into existence, and in the interests of both countries increased trade may be presumed to be desirable. But if New Zealand were permitted to bring section 3 into operation, such a line could not trade between New Zealand and Australia. It does not require much foresight to see how serious the results of such a position would be.

It appears, therefore, that the objections in policy to the existence of section 3 in any form are insuperable and that His Majesty's Government must refuse assent just as His Majesty's Government have had to refuse assent to other measures penalising Asiatics directly. It is well to note clearly that this is a very different matter from the question of Asiatic immigration. It is clear that there is no substantial danger of Asiatic immigration arising from vessels with lascar crews. The immigration law of New Zealand provides ample and adequate security to prevent unlawful immigration in this way and as there seems to be some slight tendency in the Dominion to confuse the two questions it may be well to insist on the difference between them.

Section 2 raises very complicated questions of policy. In the first place, apart from the existing state of law, there is some force in the argument that if Australia can properly exercise power to regulate wages over vessels whose first port of clearance and whose port of destination are in the Commonwealth, the same power should be granted to New Zealand and I consider that this power should be conceded to New Zealand and that it should be left for New Zealand and the Commonwealth to agree as to the interpretation of their powers so as to prevent such conflicts as have already taken place. The exercise of these powers would, it may be noted, enable the two Dominions to deal with certain,

at least, of the cases of competition by vessels carrying lascars without adopting a differentiation based on colour.

In the second place, in the case of vessels which trade from Europe or England or America to Australia and New Zealand, it seems to me that they are not at present, in the view of the Commonwealth High Court, subject to Australian law, and that they should not be subject to New Zealand law unless, of course, they coast in Australia or New Zealand, when, for such period of time as they are coasting, they should be subject to the New Zealand or Australian conditions. It does not seem to me reasonable to place any further fetters on trade; it may be pointed out that if it is reasonable that New Zealand should regulate the trade between New Zealand and Australia, it is equally reasonable that the Imperial Parliament should regulate the same trade, and that the Imperial law should prevail follows clearly from the legal constitution of the Empire and from the actual predominance of the United Kingdom.

In the third place there arises a difficulty from the fact that if vessels engage in the coasting trade of New Zealand or the Commonwealth they may avoid the payment of coasting rates by reducing the rate of wages paid in respect of those parts of their journeys beyond coasting limits. The Commonwealth Government have proposed a Resolution at the Imperial Conference that each part of the Empire should penalise conspiracies to evade the laws of other parts, and it is a question for serious consideration whether this desire should not so far be acceded to that the payment of less wages, because higher wages have been paid in the coasting trade, should be forbidden by Imperial legislation. But it must be remembered that this will possibly place British shipping in a less favourable position than foreign shipping.

The position in the case of the Commonwealth of Australia has also recently become complicated.

Since the passing through the Senate of the Navigation Bill of 1910, the question of the legislative authority with regard to coasting trade has been considered by the High Court of the Commonwealth in the case of the *Seamen's Compensation Act of 1909*. In the case in question, decided in December, 1910—*S.S. Kalibia v. Wilson*\*—the vessel was chartered to carry cargo from New York to Australian ports, which under the charter were to be Adelaide, Melbourne, Sydney, and Brisbane. No other trading was contemplated by the charter, but as a mere matter of courtesy a small package (7 lbs. in weight) which had been part of the cargo of another ship and had been inadvertently left behind at Adelaide was carried by the captain to Brisbane. No charge was made, no bill of lading or shipping note was signed and the package was not entered in the ship's manifest. The respondent shipped at Sydney as a seaman for the voyage to Brisbane and back and was injured by an accident before the ship reached Brisbane, where he was discharged. It was sought by the respondent to have the ship detained under the power conferred by section 13 of the Act, which provides that if it is alleged that the owner of a ship actually within the territorial waters of Australia is liable as such to pay

\* Will not be officially reported probably for some months. The account here is taken from a comparison of the detailed newspaper reports. It is clearly correct in substance.



compensation under the Act, a Justice of the High Court or a Judge of the Supreme Court may issue an order for detention of the ship until security has been given for payment of compensation. By section 4 of the Act it was made to apply to the employment of seamen engaged in the coasting trade and a ship was to be deemed to be engaged in the coasting trade "if she takes on board passengers or cargo at any port in a State . . . to be carried to and landed and delivered at any port in the same State . . . or another State."

Mr. Justice Street made an order for the detention of the vessel and Mr. Justice Gordon refused to discharge the order, and from this order an appeal was brought on two grounds:

- (1) that upon the undisputed facts the Act did not apply to the ship in question, and
- (2) that the Act was not within the powers of the Parliament of the Commonwealth.

The Court held that the first ground for appeal was clearly justifiable. It was laid down that as a general rule a ship could not become engaged in the coasting trade without the knowledge and volition of the owner or of some person for whose acts he was responsible. There was nothing to suggest that the chief officer or the master, who offered no objection, had any authority on behalf of the owners to engage the ship in the coasting trade even if the isolated transaction were otherwise within the words of the section. The words "taken on board" and "to be carried" imported a contract of carriage made on behalf of the ship and did not include a promise made by a passenger or any other person not authorised to bind the owner to carry on board the ship goods as to which the owner did not incur any responsibility.

The Court, although they considered that the matter could be disposed of on that ground, decided, as the Commonwealth had intervened by permission, to give a decision on the general question of the validity of the Act. Two objections were made to its validity. First that provisions for compensation to seamen could not under any circumstances fall under the trade and commerce power of section 51 of the Constitution, and that if they did the particular Act was invalid for another reason. The first question the Court declined to deal with, on the ground that it was abstract, but the second question they dealt with in detail. Section 4, sub-section 1, provided that the Act applied in relation to the employment of seamen

- (a) on any ship registered in the Commonwealth when engaged in the coasting trade, and
- (b) on any ship (whether British or foreign) engaged in the coasting trade if the seamen had been shipped under articles of agreement entered into in Australia.

It appeared therefore that the law applied to all trade between different Australian ports and not merely to trade between ports of different States; if there were any doubt about this as regards sub-section 1 it was made clear by the terms of sub-section 2, which expressly declares that a ship is to be deemed to be engaged in the coasting trade if she takes on board passengers or cargo at any port in a State to be carried to and landed or delivered at any port in the same State. Now it was not open to argument that the power to make laws with respect to trade and commerce with other countries and among the States given by the Constitution extended to authorise the Parliament to legislate

with respect to the internal trade of a State. It followed that the provisions of Section 4 of the Act went beyond the powers of the Parliament so far as they purported to regulate purely internal coasting trade and were to that extent invalid. Then the Court considered whether the valid provisions could be separated from the invalid provisions, and they laid down, as in the *Railway Servants case*\* and the *Bootmakers case*,† the principle that when, in the attempted exercise of a power of limited extension, an Act is passed which in its terms extends beyond the prescribed limits the whole Act was invalid unless the invalid part was plainly severable from the valid. They held that in this case to interpret the law as referring only to inter-State trade would be to create a new law and not to carry out the intended law. When the Legislature assumed jurisdiction over a whole class of ships over some of which it had and over others it had not jurisdiction in point of law and plainly asserted its intention to place them on the same footing, the Court would be making a new law if it gave effect to the Statute as a law intended to apply to part only of the class. The Court, therefore, held that the whole Act was invalid and reversed the decision of the Court below.‡

It is important to note that the decision evidently treats the powers to deal with navigation as referring only to navigation between the States and with foreign countries and therefore that the Parliament of the Commonwealth has no power to deal with merchant shipping except in so far as shipping between the various States is concerned. Unless and until, therefore, the amendments proposed to the Federal Constitution are made it will be impossible for the Parliament of the Commonwealth to pass any really effective merchant shipping legislation, and should the amendments be rejected an amendment of the Constitution on this particular point might be desirable by the passing of an Imperial Act to extend the authority of the Commonwealth in this regard. This course would not probably be seriously questioned by the States: they are prepared, it is believed, to surrender merchant shipping to the Commonwealth, and the rejection—probably unlikely—of the amendments—which are infinitely more general than shipping—would not be a sign that the States and the people disapproved of their acceptance when limited to shipping.

A. B. K.

12th February, 1911.

\* 4 C.L.R., 488.

† 16 A.L.R., 373.

‡ They dismissed summarily the argument that the Court had Admiralty jurisdiction.



CD 826/4/12

32



Dominions  
No. 32.

CONFIDENTIAL.

IMPERIAL CONFERENCE, 1911.

REORGANISATION OF THE COLONIAL  
OFFICE AND POSITION OF HIGH COM-  
MISSIONERS.

NEW ZEALAND RESOLUTION 3.

(3) *Reconstitution of the Colonial Office, &c. :—*

(1) *That it is essential that the Department of the Dominions be separated from that of the Crown Colonies, and that each Department be placed under a separate Permanent Under-Secretary.*

(2) *That in order to give due effect to modern Imperial development it has now become advisable to change the title of Secretary of State for the Colonies to that of "Secretary of State for Imperial Affairs."*

(3) *That the staff of the Secretariat be incorporated with the Dominions Department under the new Under-Secretary, and that all questions relating to the self-governing Dominions be referred to that Department: the High Commissioners to be informed of matters affecting the Dominions with a view to their Governments expressing their opinion on the same.*

(4) *That the High Commissioners be invited to attend meetings of the Committee of Defence when questions on naval or military Imperial defence affecting the oversea Dominions are under discussion.*

(5) *That the High Commissioners be invited to consult with the Foreign Ministers on matters of foreign, industrial, commercial, and social affairs in which the oversea Dominions are interested, and inform their respective Governments.*

(6) *That the High Commissioners should be the sole channel of communication between Imperial and Dominion Governments, Governors-General, and Governors on all occasions, being given identical and simultaneous information.*

1. The present organization of the Colonial Office is described in Lord Elgin's despatch of 21st September, 1907, and the discussion at the Conference of 1907, which led up to Lord Elgin's despatch, is described in the annexed memorandum (Appendix).



2. This Resolution divides itself into two branches, one relating to the organisation of the Colonial Office, the other relating to a new position proposed to be assigned to the High Commissioners which does not involve any change in the Colonial Office itself and will require to be discussed separately.

#### CHANGES IN THE COLONIAL OFFICE.

##### (1) *Separation between the Departments of the Dominions and the Crown Colonies.*

3. Separation has been carried out in accordance with Lord Elgin's undertaking at the last Conference. It is practically complete so far as circumstances and convenience have admitted. The separation is subject to the following qualifications, the two Departments are in the same building, there is no formal separation between the staff of each, and both Departments have been under the supervision of the Permanent Under-Secretary of State for the Colonies who is responsible to the Secretary of State for the efficient conduct of the work in the whole office and who is charged with the duty of advising the Secretary of State on matters appertaining to both Departments alike.

4. A certain amount of work which relates to the Dominions directly and indirectly but is common to both the Dominions and the Crown Colonies, is performed by the General Department of the Colonial Office: *e.g.*, matters such as those arising out of the Coronation and Examinations in connexion with the University of London, are dealt with in the General Department. All matters other than mere routine are, however, referred to the Dominions Department and the retention of this sort of work in the General Department is simply due to the desire to simplify procedure and avoid needless duplication of routine work. Further, in the case of the Crown Colonies and Protectorates in South Africa and the Western Pacific, which are still retained under the direct control of the Imperial Government, but which are necessarily dealt with in the Dominions Department in view of the interest of the Union of South Africa and the Commonwealth of Australia and New Zealand respectively in these territories, matters which are dealt with by circular despatch (including for example questions relating to Tropical Medicine, Hygiene, and so forth) are dealt with along with the other Crown Colonies and Protectorates, and not separately by the Dominions Department. This, of course, is a very small matter and the procedure could be altered if it were not that the question is so trivial that it is not worth while duplicating the work.

##### (2) *The title of the Secretary of State.*

5. The proposed title of Secretary of State for Imperial Affairs has no doubt suggested itself because the conference of the Prime Ministers of the self-governing Dominions with the Prime Minister of the United Kingdom is now called the "Imperial Conference."

The last Conference accepted the designation of self-governing Dominions beyond the Seas for those possessions enjoying responsible government, and this designation was derived from the King's title relating to all the oversea possessions, except India, *viz.*, "of the British Dominions

beyond the Seas King." If the title is to be changed the designation of "Secretary of State for the British Dominions beyond the Seas" would be an alternative to the "Secretary of State for Imperial Affairs."

##### (3) *Incorporation of the Staff of the Secretariat in the Dominions Department.*

6. At the Conference of 1907, Mr. Deakin and Dr. Jameson strongly pressed that an Imperial Secretariat should be created independent of the Colonial Office. To this Sir W. Laurier was altogether opposed. Lord Elgin decided, and informed the Conference, that a separate Dominions Department of the Colonial Office should be created and a Secretariat linked to but not merged in it. This course has been carried out, but there has been no direct correspondence between the Secretary and the Colonial Ministries nor correspondence through the High Commissioners. Neither of these two methods was generally approved: they would have involved a certain independence on the part of the Secretariat and the drawing of a very definite line between the work of the Dominions Department and the work of the Secretariat, which is hardly practicable.

7. The connexion between the Secretariat and the Department has been made as close as can be, short of merging, and therefore the Secretary and Assistant Secretaries of the Conference also deal with the ordinary business of the Dominions Department. The position is that in addition to the work connected with the Imperial Conference which covers the increasing correspondence on questions raised at these Conferences there is a considerable amount of work which is of interest only to each separate Dominion and there is work connected with the six Australian States, which are not represented directly at Imperial Conferences. There is also the work connected with the South African Protectorates and the Western Pacific Colonies and Protectorates. This wider sphere of work renders it necessary that the Dominions Department should contain a larger number of members than would be requisite if the work to be done were merely that falling to the Secretariat of the Conference. Accordingly, the Staff of the Dominions Department as constituted, consists of the Senior Assistant Under Secretary, a Second Assistant Under Secretary, two Principal Clerks, two Senior Clerks, and three Junior Clerks; of these, the second Assistant Under Secretary is Secretary to the Imperial Conference, a Senior Clerk and a Junior Clerk have been appointed Assistant Secretaries, and these three are more specially charged with the work arising out of the Imperial Conference. But in addition to this work these members of the Office take their share of the other work relating to the Dominions, and on the other hand the Principal Clerks of the North American and Australian and South African Departments (into which the Dominions Department is sub-divided) deal also to some extent with the work relating to the Conference Secretariat in so far as it relates to their Departments.

8. A close association of the Secretariat with the Dominions Department is essential in order to secure continuity in the treatment of subjects which from time to time may become Conference subjects, and subsequently,



after having been dealt with by the Conference, may revert to the Dominions Department. But the actual merging of the Secretariat in the Dominions Department is not requisite in any way to secure that the Secretariat and the Dominions Department shall work in conjunction.

9. It will be seen from what is stated above that the two propositions laid down under the first sentence of (c) of the resolution are practically fulfilled in the present organization of the Colonial Office.

#### POSITION OF THE HIGH COMMISSIONERS.

10. The resolution proposes that all business with the Dominion Governments should be transacted through the High Commissioners and that the High Commissioners should be invited as of right to consult with His Majesty's Government upon questions of naval and military defence and of foreign policy.

The present position is that if the Dominion Governments desire to use the High Commissioner as the means of approaching His Majesty's Government on any question they are at liberty to do so.

In regard to naval and military defence a resolution passed at the last Conference gave the Dominions the liberty of asking that any matters should be referred to the Committee of Imperial Defence for advice and that the Dominion concerned should be represented. Moreover the Colonial Defence Committee, on which it is possible to associate representatives of the Dominions for the discussion of defence questions which affect them, is constituted a sub-Committee of the Committee of Imperial Defence.

Similarly with regard to questions of foreign policy there is no bar at present to the High Commissioner being admitted to discuss a question affecting his Dominion with the Foreign Secretary at the instance of his Government. This system is believed to have worked satisfactorily so far. Sir Wilfrid Laurier's standing phrase with regard to the Colonial Office and Imperial relations has been in the past that he has no complaint to make. It does not appear to be at all probable that there could be unanimity among the Prime Ministers in pressing the proposals of Sir J. Ward.

The elasticity of the present arrangement must, it would appear, continue to commend it to the Dominions as a whole, for hitherto the confidence reposed by the Dominion Governments in their High Commissioners has been of a varying measure, dependent upon the personality of the incumbent of the office and upon his precise relations with the Dominion Ministry actually in power.

11. It is clear that the proposals of Sir J. Ward for a new position for the High Commissioner are made less from the point of view of practical advantage than as the introduction of a new principle to be applied all round. They will have to be discussed in the Conference in that aspect. The same principle would have to be applied, if desired by the Australian States Governments, to their Agents-General, who cannot be expected to be of the same calibre as the High Commissioner.

Agents-General in the past have, some of them, been mixed up in party politics here, and such a possibility of representatives of the Dominions taking sides in party politics or being known to have pronounced views constitutes a serious objection to the acceptance of the High

Commissioner (and Agent-General) as the sole channel of communication.

12. But taking these proposals and claims on their merits as made by New Zealand for herself and her High Commissioner what answer should be given to them by His Majesty's Government?

(i) As regards representation on the Committee of Imperial Defence the position has been changed since 1907 by the establishment of an Imperial General Staff and by the part taken by New Zealand in contributing a Dreadnought to the Navy. She may properly claim to attend meetings when matters directly appealing to her interests are under discussion, but it is a matter for consideration of the Defence Committee when, and in what circumstances, the New Zealand representative should be invited to attend, and the Defence Committee may have something to say as to the question how far the High Commissioner, as a layman, would be the best representative in certain contingencies. The answer to the claim would be a qualified acceptance, the qualification being that the Committee of Imperial Defence would determine when to summon the New Zealand representative. But the Committee of Imperial Defence must first consider the matter.

(ii) As to consultation with the Foreign Minister, the answer is that a system which eliminated the functions of the Colonial Office and of Governors and Governors-General would not be in the best interests of the relations between His Majesty's Government and the Dominion Governments.

The duty of the Colonial Office is to press the view of the Dominion upon the Foreign Office and to reinforce that view, whilst the Foreign Office is primarily concerned with the interests of His Majesty's Government as affected by the contention of the foreign Government; friction is more easily avoided and a result more advantageous to the Dominions more certainly reached through the intervention of the agency of the Colonial Office. Nor could His Majesty's Government dispense with the assistance of the Governor or Governor-General—his information derived from discussion with his Ministers, and his agency as a means of conveying to Ministers confidentially the views of His Majesty's Government on important occasions.

(iii) The adoption of the proposal that the High Commissioner should be the sole channel of communication between the Imperial and Dominion Governments is really impracticable in its absolute meaning, for it is manifestly impossible for His Majesty's Government to accept the position that in no case should messages for communication to Ministers be sent by telegraph or despatch to the Governor or Governor-General by the Secretary of State.

13. It would be possible, if it were the wish of the Dominions, to communicate simultaneously to the High Commissioner copies of all the ordinary despatches addressed to the Governor or Governor-General on the understanding that the contents would not in any case be telegraphed without previous communication with this Office. There would be no advantage from a practical point of view in following the plan of actually making the High Commissioner the channel of communication, except in so far as it is intended to elevate the position of High Commissioner at the expense of the position of His Majesty's representative.

At present we believe it is not the practice of the Governments of the Dominions to communicate more than



a proportion of their Ministerial Minutes or Orders in Council to the High Commissioners.

In Canada all business is transacted by Order in Council and the Governor-General is therefore cognizant of all these Ministerial proceedings.

*N.B.*—Sir J. Ward does not raise the question of the splitting of the Colonial Office into two separate Departments, each under a separate Ministerial head. This is a subject for separate treatment.

January, 1911.

H. W. J.

CONFIDENTIAL.

REORGANISATION OF THE COLONIAL  
OFFICE.

SUMMARY OF DISCUSSION AT CONFERENCE OF  
1907 AND ACTION TAKEN.

Od. 3793.

THE present organisation of the Colonial Office, as altered in 1907 in accordance with the terms of Lord Elgin's despatch of the 21st September, 1907, was the result of the discussion at the Colonial Conference of that year, which was embodied in Resolution 1 of the Conference.

The Resolution itself reads as follows :—

" That it will be to the advantage of the Empire if a  
" Conference, to be called the Imperial Conference, is  
" held every four years, at which questions of common  
" interest may be discussed and considered as between  
" His Majesty's Government and His Governments of  
" the self-governing Dominions beyond the seas. The  
" Prime Minister of the United Kingdom will be *ex officio*  
" President and the Prime Ministers of the self-governing  
" Dominions *ex officio* members of the Conference. The  
" Secretary of State for the Colonies will be an *ex officio*  
" member of the Conference and will take the chair in  
" the absence of the President. He will arrange for  
" such Imperial Conferences after communication with  
" the Prime Ministers of the respective Dominions.

" Such other Ministers as the respective Governments  
" may appoint will also be members of the Conference—  
" it being understood that, except by special permission  
" of the Conference, each discussion will be conducted  
" by not more than two representatives from each  
" Government, and that each Government will have  
" only one vote.

" That it is desirable to establish a system by which  
" the several Governments represented shall be kept  
" informed during the periods between the Conferences  
" in regard to matters which have been, or may be,  
" subjects for discussion by means of a permanent  
" secretarial staff charged, under the direction of the  
" Secretary of State for the Colonies, with the duty of  
" obtaining information for the use of the Conference,  
" of attending to its Resolutions, and of conducting  
" correspondence on matters relating to its affairs.



"That upon matters of importance requiring consultation between two or more Governments which cannot conveniently be postponed until the next Conference, or involving subjects of a minor character or such as call for detailed consideration, subsidiary Conferences should be held between Representatives of the Governments concerned specially chosen for the purpose."

But it is necessary for the full appreciation of this Resolution and for a clear understanding of the reorganisation effected by Lord Elgin's despatch to recite the history of Mr. Lyttelton's proposal for an Imperial Council and auxiliary Commission made in his despatch of the 20th April, 1905, and also to indicate the actual course of the discussion on the Conference which led to the framing of the Resolution.

Mr. Lyttelton's proposal was that the title "Colonial Conference" should be discarded, and the name "Imperial Council" substituted for it, and he wished the future composition of this Council to be discussed at the next Conference. He also suggested that there should be a permanent Commission representing all the States concerned, to which the Imperial Council might refer questions for examination and report. The Commission would, it was proposed, consist of a permanent nucleus of members nominated in a certain proportion by His Majesty's Government and the Colonial Governments—their nomination would rest with the Governments which they respectively represented. The Commission should have an office in London and an adequate secretarial staff, the cost of which His Majesty's Government would defray.

The answers to Mr. Lyttelton's despatch from Australia, Cape, and Natal were favourable to his suggestions. But Canada's reply intimated that the term "Imperial Council" indicated a more formal assemblage than the Conferences of the past, and suggested "a permanent institution which, endowed with a continuous life, might eventually come to be regarded as an encroachment upon the full measure of autonomous legislative and administrative power now enjoyed by all the self-governing Colonies." As regards the second suggestion, that of a Commission, Canada thought that such a Commission "might conceivably interfere with the working of responsible Government."

Pp. 1-5,  
Cd. 2785.

P. 14,  
Cd. 2785.

P. 15,  
Cd. 2785.

P. 4,  
Cd. 2975.

In deference to the views of Canada, Mr. Lyttelton informed the various self-governing Colonies that it seemed desirable to postpone further discussion until the next Conference. After the present Government assumed office, Lord Elgin, in a despatch of the 22nd February, 1906, informed the several Governors and Governors-General that he did not feel himself called upon to adopt the recommendation of Mr. Lyttelton's proposals, but that the scheme should be freely discussed when the Conference met.

When the Conference met in 1907 there came before it a resolution proposed by Australia adopting Mr. Lyttelton's proposals to a considerable extent and a more general resolution proposed by New Zealand in favour of the establishment of an Imperial Council.

P. 6,  
Cd. 3337.

#### *Australian Resolution.*

"That it is desirable to establish an Imperial Council, to consist of Representatives of Great Britain and the self-governing Colonies, chosen *ex-officio* from their existing Administrations.

"That the objects of such Council shall be to discuss at regular Conferences matters of common Imperial interest, and to establish a system by which members of the Council shall be kept informed during the periods between the Conferences in regard to matters which have been or may be subjects for discussion.

"That there shall be a permanent secretarial staff charged with the duty of obtaining information for the use of the Council, of attending to the execution of its Resolutions, and of conducting correspondence on matters relating to its affairs.

"That the expenses of such a staff shall be borne by the countries represented on the Council in proportion to their populations."

P. 8,  
Cd. 3337.

#### *New Zealand Resolution.*

"That it would be to the advantage of the Empire and facilitate the dealing with questions that affect the over-sea Dominions, if an Imperial Council were established to which each of the self-governing Colonies should send a representative."

P. 29,  
Cd. 3523.

On the second day of the Conference (17th April), Mr. Deakin, on behalf of Australia, initiated the discussion on the subject, and at once deferred to the Canadian suggestion that the term "Imperial Conference" should be accepted instead of "Imperial Council," as Australia had no wish to alter the existing authority or powers



of the Conference. Sir Wilfrid Laurier elicited from Mr. Deakin that the idea of a Council as Mr. Lyttelton had it in mind, *i.e.*, an Imperial Council composed as the Conference and assisted by a permanent body similar to the Imperial Defence Committee was not pressed by Mr. Deakin. But Mr. Deakin advocated the appointment of a Secretariat by the Conference, to be the agency by which the work of the Conference would be prepared and its resolutions acted upon. He suggested that the Secretariat should be under the Prime Minister, and went on to propose that the Colonial Office should deal solely with the Crown Colonies, and that any communications between the self-governing Dominions and the mother country should pass through another channel, preferably the Prime Minister. Sir Wilfrid Laurier expressed the opinion that the Prime Minister was too busy a man to be burdened with further duties, and said "the Colonial Office, which is already divided into P. 30. Departments, is the proper Department to deal under Ministerial responsibility with the self-governing Colonies or Crown Colonies."

Sir Joseph Ward desired that the self-governing Colonies should be put under a separate category with a separate administration within the Colonial Office, and wished the application of the term "Colony" to the self-governing possessions to P. 31. cease. Whether the body was to be called "Imperial Conference" or "Imperial Council" he wished it to consist of the Prime Ministers of the self-governing Colonies, the Prime Minister of England, and the Secretary of State for the Colonies. He was not favourable to the creation of a separate office as an intermediary between the respective Prime Ministers during the recesses.

General Botha took the same view as Sir W. Laurier in regard to the adoption of the designation "Imperial Council," thinking it might lead to an infraction upon the rights of responsible government. On the question of the Secretariat P. 32. he did not consider Mr. Deakin's suggestion quite happy. He wanted to maintain the bond of connection as directly as possible between the Colonial Office and the self-governing possessions.

After these expressions of opinion had been given, Lord Elgin, as Chairman, indicated that if the Conference desired the Colonial Office to

provide for the continuity of work between its meetings, he would do his best to arrange to meet what was required. Sir Wilfrid Laurier thereupon gave a fuller explanation of his view that the Secretariat must not be an independent body. Mr. Deakin immediately afterwards indicated his desire that the Secretariat under the Prime Minister should deal with all the important despatches involving constitutional questions relating to the self-governing communities.

On the next day (18th April) Lord Elgin announced that the Prime Minister would be ready to become *ex officio* President of the Conference, but that the Prime Minister could not agree to an arrangement for putting the Secretariat under his control as President of the Conference.

Sir Wilfrid Laurier was entirely in agreement with this decision, his criticism being that the secretarial staff would, under Mr. Lyttelton's proposal, have been under no control, whereas, in his opinion, the one thing necessary was that it should be under direct ministerial responsibility. Mr. Winston Churchill also pointed out that from the inner working of the Colonial Office there would be almost insuperable difficulty in the classification of the different possessions of the Empire exclusively according to status. "There must be a geographical classification as well, and it would involve a great duplication of machinery if separate machinery altogether were set up in the desire to place the Secretariat entirely under the control of the Prime Minister."

Lord Elgin's definite statement as to what he undertook to do on behalf of His Majesty's Government to provide a link between Conference and Conference subject to Ministerial responsibility is quoted in the despatch in which he sets out the reorganisation of the Colonial Office.

The statement was received without definite objection on the part of any member of the Conference except Mr. Deakin. Sir Joseph Ward specially welcomed it. Mr. Deakin held that the term "secretarial staff" had now lost its meaning, because what was now intended was not a separate body, but a branch of the Colonial Office, and he wanted to omit it. But Sir Joseph Ward, although agreeing that Mr. Deakin's proposal would probably more

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correctly indicate what the actual decision was, had a preference for indicating a permanent secretarial staff, and the words were left in.

The resolution of the Conference accordingly in set terms made the Secretary of State for the Colonies Chairman of the Conference in the absence of the President, and placed the secretarial staff dealing with the business of the Conference in the interval between its meetings under the charge of the Secretary of State for the Colonies.

Lord Elgin's despatch on the reorganisation of the Colonial Office explained how he had carried out his pledge to the Conference, and made the suggestion that the High Commissioner or Agent-General should act as a channel of communication on matters of routine between the Secretary to the Conference and the Colonial Ministers as an alternative to communications passing between the Secretary and the Ministries under flying seal between the Secretary of State and the Governor-General and Governor. No reply was received from Canada or New Zealand to Lord Elgin's despatch. Cd. 3795.

Mr. Deakin's reply on behalf of Australia was to the effect that apparently all that had been done was to re-name a sub-department of the Colonial Office, and that the compromise adopted by the resolution failed to meet the wishes of the Australian Government in three respects, for the compromise submitted by Australia Cd. 5273. P. 4.

- (a.) Contemplated an organisation entirely separated from the Colonial Office;
- (b.) Proposed that the officers should be introduced by or on behalf of the Conference;
- (c.) Provided that the expenses of the staff should be borne by the country represented.

Mr. Deakin added that Ministers deferred their suggestions as to the position of the High Commissioner for the Commonwealth in relation to the secretarial branch of the Dominions sub-department of the Colonial Office.

The Cape Colony, Natal, and Transvaal approved of the arrangements made by Lord Elgin, and suggested that the Agents-General should be brought into relations with the Secretariat. Cd. 5273. Pp. 2-5.

This matter was not taken up in view of the silence of Canada and New Zealand and of the answer from Australia.

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Dominions

No. 33.

CONFIDENTIAL.

Imperial Conference, 1911.

RESOLUTION (No. 1) OF UNION OF SOUTH  
AFRICA.

That it is desirable that all matters relating to self-governing Dominions as well as permanent Secretariat of the Imperial Conference be placed directly under the Prime Minister of United Kingdom.

1. General Botha's Resolution for the first time will formally put forward a proposal inviting the assent of all of the Dominions to the splitting of the Colonial Office and the transfer of the work of the Dominions, including the permanent Secretariat, to the Prime Minister.

In 1907 it was the Secretariat which Mr. Deakin and Dr. Jameson wished to put under the Prime Minister, Mr. Deakin adding the suggestion that the Secretariat under the Prime Minister should deal with all the important despatches involving constitutional questions relating to the self-governing communities.

2. The Prime Minister (Sir Henry Campbell-Bannerman) was unable to accept the duty of being responsible for the Secretariat, though he accepted the titular presidency of the Conference.

It is generally admitted that it would be impossible for the Prime Minister to undertake the burden of responsibility and work entailed upon the Secretary of State for the Colonies in respect of the self-governing Dominions. In Canada the Prime Minister has found it necessary to delegate a part of the work of the Department of External Affairs to another Minister, the Secretary of State.

3. But assuming that General Botha, even when his proposal is negatived, still desires the work of the self-governing Dominions to be placed under some Minister other than the Secretary of State for the Colonies, and is supported by other Prime Ministers, are His Majesty's Government prepared with an alternative plan? It must be noted that the only other proposal before the Conference, that of Sir Joseph Ward, is for complete bifurcation, not for complete separation, and it is therefore doubtful whether separation will be pressed by the Prime Ministers as a body.

Lord Crewe, in his speech at the dinner to Sir G. Reid in March last, committed himself to the possibility of separation in the future, but indicated reluctance to see the change come about.

4. An alternative plan, in the form of an arrangement under which the Lord President of the Council would



take charge of the self-governing Dominions, is set out in Sir Charles Lucas's Memorandum of the 23rd July, 1910; the suggestion had previously been made by Mr. L. S. Amery in a paper read by him before the Royal Colonial Institute on the 14th June.

Sir Charles Lucas, however, would still propose that the Prime Minister should be the spokesman of the Dominions in the House of Commons, and that certain large questions might be remitted to the Prime Minister by the Lord President without overtaxing him. I have suggested in my Memorandum some reasons for the view that it is neither practicable nor desirable to tax the Prime Minister even with this amount of work. Any direct responsibility of the kind would entail upon him considerable social duties in the way of attending interviews and attending public functions, etc., which he would be unable to discharge satisfactorily because he could not spare the time.

5. There is another suggestion that, in order to veil the position of the Secretary of State for the Colonies in relation to the self-governing Dominions, or rather in order to place it on a different plane, a Committee of the Privy Council should be established, of which the Prime Minister would be President and the Secretary of State for the Colonies Vice-President, and that all communications relating to the self-governing Dominions should emanate from the Vice-President of this Committee. This plan might satisfy both General Botha and Sir Joseph Ward, if it commends itself to His Majesty's Government, and would practically preserve the existing position of the Secretary of State, with a somewhat thin disguise. As Vice-President of the Committee of Council for the self-governing Dominions he would, in that capacity, rid himself of the now unfashionable word "Colonies."

6. There is, however, a proposal arising out of the affiliation of the Dominions to the Privy Council which requires some consideration.

It is suggested that the High Commissioners should be sworn of the Privy Council, and form the nucleus of a Committee of that Council, advising in the intervals of the Conferences on matters common to all the Dominions, though the suggestion is hardly likely to prove acceptable, seeing that a permanent Commission of this kind was not accepted by the last Conference, being viewed as constituting a possible infraction upon self-government. The association of the High Commissioners with the Privy Council is not necessary, and might be inconvenient, e.g., Mr. Deakin refused to be made a member of the Privy Council. It might, moreover, tend to confusion, for the proposed Committee would be a Committee of the Conference, not of the Council. It is perhaps worthy of notice that a somewhat similar confusion lurked, consciously or unconsciously, in Mr. Deakin's proposal that the Secretariat of the Conference should practically deal with all the important business of the Colonial Office, the Secretariat being manned by a composite body of officers of the various Dominions and of the Home Government. He meant the Secretariat to swallow up the Dominions Department. The reverse process is that which is actually taking place.

7. It is necessary to preserve a clear distinction between the Colonial Office as it is now or as it may be hereafter—a Department of His Majesty's Government,

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pp. 7-10.

just as the Ministries of External Affairs are separate Departments under the Dominion Governments—and the Imperial Conference or any offshoot of the Imperial Conference in the shape of an Imperial Council.

It is only matters of common interest which can properly form the subjects of conference in common in London, and even when the Prime Ministers meet they cannot commit their Governments or Parliaments absolutely on any particular important question. Questions under discussion between His Majesty's Government and individual Dominion Governments must be transacted separately, and not necessarily in London with the individual High Commissioner, but usually and normally through the Governor-General, who deals with Ministers directly.

8. This brings us to the consideration of the New Zealand resolution on the subject of an Imperial Council.

(2.) *Imperial representation of overseas Dominions with a view to furthering Imperial sentiment, solidarity, and interest.*

"That the Empire has now reached a stage of Imperial development which renders it expedient that there should be an Imperial Council of State, with representatives from all the constituent parts of the Empire, whether self-governing or not, in theory and in fact advisory to the Imperial Government on all questions affecting the interests of His Majesty's Dominions overseas."

This Resolution goes further than the similar Resolution proposed by New Zealand at the last Conference in providing for the representation on the Imperial Council of possessions of the Crown, whether self-governing or not.

9. The exact nature of this Imperial Council is not defined. It is to advise His Majesty's Government on all questions affecting His Majesty's Dominions overseas.

The Resolution appears to mean that the Secretary of State should always arrive at important decisions in Council, being advised by some representative of the Dominion or Colony—in the case of a Dominion by the High Commissioner.

10. Such a scheme could not well or easily be carried out in regard to the Crown Colonies, for the Governor on the spot might resent advice being given by some ex-Governor to the Secretary of State. At present, if he wishes to do so, the Secretary of State can consult informally any one whom he chooses to select. His Majesty's Government, for their part, may hesitate to accept the application of the Imperial Council to non-self-governing Colonies.

11. As regards the Dominions, their Governments would not in all cases wish to associate their High Commissioners with the Secretary of State. The telegraph has made great changes, but until telephonic communication has been established between the Dominions and London it will not, I think, be possible to expect that the representatives of the Dominion Governments as a body will be commissioned to act as plenipotentiaries in advising His Majesty's Government.



But it is for Sir Joseph Ward to develop his proposal and to elicit the opinions and comments of his fellow Prime Ministers.

12. At present His Majesty's Government are advised in respect of questions affecting each Dominion by the Ministry of that Dominion through His Majesty's Representative and the Secretary of State. The several Dominions will not desire their special interests to be advised upon by representatives of other Dominions. Presumably, therefore, the intention is that the Council should be composed differently at different times according to the nature of the question before it. If the question affects one Dominion only, the representative of that Dominion only would be present; if it affects several or all, the representatives of several or all.

From the point of view of His Majesty's Government a very serious problem arises, in so far as the proposal would involve placing confidential papers and information on all questions affecting the Dominions before their representatives as of right. Even Mr. Lyttelton's scheme withheld subjects for discussion from his Commission unless referred to them, the Secretary of State being in a position to prevent such reference.

13. If, however, the resolution were intended to relate only to questions affecting the *common* interests of the Dominions then the basis upon which consultation takes place must still remain that which governs the proceedings of the Imperial Conference. The self-governing Dominions, in order to preserve their rights unimpaired, and the United Kingdom, in order to preserve its freedom of action, must consult together without being bound to accept the decision of a majority. The advice of the majority might be altogether unacceptable to His Majesty's Government or to one of the Dominions whose interests may be affected.

The proposed Imperial Council, if ancillary to the Imperial Conference, appears to be the same kind of body as the Permanent Commission of the Imperial Conference under Mr. Lyttelton's proposals, and this body did not find acceptance from Mr. Deakin at the Conference itself or from General Botha any more than from Sir Wilfrid Laurier. If, on the other hand, it were intended to put the Imperial Council in the place of the Imperial Conference and not to have an additional body, the proposal resolves itself into a change of name from Imperial Conference to Imperial Council (Imperial Council was proposed by Mr. A. Lyttelton, p. 3 of Cd. 2785), a change of composition in so far as the Council is to include representatives of non-self-governing parts of the Empire, and a change of function if it is to be advisory in any larger sense than the Imperial Conference. Moreover, it is intended to be in permanent session, and the representatives of the Dominions could no longer be Prime Ministers able to speak with full authority for their respective units, and thus they would be continually having to refer to their Governments for instructions as to what advice they should give on any important subject.

H. W. J.

February 6, 1911.